TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1891~~ 1903

No. ~~11~~, ORIGINAL.

THE STATE OF IOWA, COMPLAINANT,

vs.

THE STATE OF ILLINOIS.

IN EQUITY.

ON BILL AND CROSS-BILL.

FILED NOVEMBER 17, 1891.

SUPREME COURT OF THE UNITED STATES.

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THE STATE OF IOWA, COMPLAINANT,

vs.

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...ND & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 8, 1892.

1 Supreme Court of the United States, October Term, 1891.

At the Capitol of the United States, in the city of Washington and District of Columbia, being the present seat of the National Government of the United States, on the second Monday of October (being the twelfth day of the same month), in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and sixteenth, the Supreme Court of the United States met agreeably to law.

And afterwards, to wit, on the 17th day of November, A. D. 1891, a motion for leave was filed in the words and figures following, viz:

2 In the Supreme Court of the United States.

THE STATE OF IOWA, Complainant,
vs.
THE STATE OF ILLINOIS, Defendant.

Motion for Leave.

Comes now Jno. Y. Stone, att'y gen'l of the State of Iowa, — for leave to file the following papers in the foregoing-entitled cause, those filed by the State of Illinois being at the request of the att'y gen'l of that State:

1. Bill of complaint of the State of Iowa.
2. Answer of the State of Illinois.
3. Cross-bill of the State of Illinois.
4. Reply of the State of Iowa.
5. Answer of Iowa to respondent's cross-bill.

And it is further moved that, inasmuch as this is a suit to determine a boundary between two States, involving questions relating to taxation and the collection of revenue between States, it be advanced for hearing at an early day, both parties appearing and consenting thereto, as shown in the bills and answers herein.

JNO. Y. STONE,
Att'y Gen'l of Iowa.

(Endorsed:) Supreme Court U. S. 1891, October term. No. 11, original. The State of Iowa, complainant, *vs.* The State of Illinois.

3 *Motion for Leave to File Bill, Answer, Cross-Bill, Answer to Cross-Bill, & Replication & to Assign Cause for Argument. Filed Nov'r* 17, 1891.

4 And on the same day, to wit, on the 17th day of November, A. D. 1891, the following entry appears of record, viz:

THE STATE OF IOWA, Complainant,
vs.
THE STATE OF ILLINOIS. } 11, Original.

On motion of Mr. John Y. Stone, of counsel for the complainant,

leave is hereby granted to file the bill of complaint, answer, cross-bill, answer to cross-bill, and replication of the complainant to answer of defendant herein.

Mr. Stone also submitted to the consideration of the court a motion to fix a day for the argument of the case.

5 And on the same day, to wit, on the 17th day of November, A. D. 1891, an appearance of counsel for the complainant was filed in the words and figures following, viz:

6 Supreme Court of the United States, October Term, 1891.

THE STATE OF IOWA, Complainant,
vs.
THE STATE OF ILLINOIS. } No. 11, Orig'l.

The clerk will enter my appearance as counsel for the complainant.

JNO. Y. STONE,
Att'y Gen'l of Iowa.

☞NOTE.—Must be signed by a member of the bar of Supreme Court United States. Individual and not firm names must be signed.

(Endorsed:) Supreme Court U. S., October term, 1891. No. 11, original. Appearance for compl't. Filed Nov. 17, 1891.

7 And on the same day, to wit, on the 17th day of November, A. D. 1891, a bill of complaint was filed in the words and figures following, viz:

8 In the Supreme Court of the United States.

THE STATE OF IOWA, Complainant,
vs.
THE STATE OF ILLINOIS, Defendant. } Equity. Bill to Establish Boundary.

To the judges of the Supreme Court of the United States:

Par. 1. Complainant, The State of Iowa, by its attorney general, complaining, shows to this honorable court that said State of Iowa is one of the States comprising the United States of America, and said State of Illinois is another of said States.

Par. 2. That prior to the treaty between England, France, and Spain, in 1763, and at the time of said treaty the territory now comprising the State of Iowa was under the dominion of France, and the territory now comprising the State of Illinois was under the dominion of England (Great Britain); that by that treaty the middle of the river Mississippi was made the boundary lines between the British and French possessions in North America.

Par. 3. That by the treaty of Paris, between Great Britain and the United States, the territory comprising the State of Illinois passed to the United States, and by the purchase of the Louisiana Territory

by the United States from France the territory comprising the State of Iowa passed to the United States.

9 Par. 4. That the boundary between the territory comprising the States of Illinois & Iowa remained the middle of the river Mississippi, as fixed by said treaty of 1763.

Par. 5. That by the act of Congress of April 18th, 1818, known as the act "enabling the people of Illinois to form a State constitution," the northern and western boundaries of Illinois *is* defined as follows: Starting in the middle of Lake Michigan at north latitude 42° 30', "thence west to the middle of the Mississippi river and thence down along the middle of that river to its confluence with the Ohio river," and the constitutions of Illinois of 1818, 1848, and 1870 define said boundaries the same; yet said State of Illinois and its several municipalities bordering on said Mississippi river claim the right to and do assess and tax as in Illinois all bridges and other structures in said river from the Illinois shore to the middle of the steamboat channel or channel of said river usually traversed by steam and other crafts in carrying the commerce of said river regardless of whether said channel is east or west of the middle of the main body or arm of said river; that said authorities in Illinois value, assess, and tax as in Illinois the bridge of the Keokuk & Hamilton Bridge Company across said river from Keokuk, Iowa, to Island No. 4, in section 30, T. 5 N., R. 8 W., in Hancock county, Illinois, from the west shore of said island westward 2,462 feet to the east end

10 of the draw of said bridge, and to a point not over 580 feet east from the Iowa shore of said river, and to a point 941 feet west of the middle of said main arm or body of said river at that point.

Par. 6. That the steamboat channel, or channel of the river where boats ordinarily run in carrying the commerce of the river, varies from side to side of said river, sometimes next to the Illinois shore and then next to the Iowa shore, and at other times crosswise, at most points in said river shifting from place to place as the sands of its bed are changed by the current at every stage of change of water; that at the point of the Keokuk & Hamilton bridge the river bed is rock and not subject to much change; that at that point, were it not for the bridge, the middle of the steamboat channel would be, and was before said bridge was erected, fully 300 feet east of the east end of the draw in said bridge, or 880 feet from the Iowa shore of said river and 2,162 feet from the shore of said river in Illinois on Island No. 4; that at places in said river there are two or more channels equally accessible and useful for the navigation of said river by steamboats and other crafts carrying the commerce of said river; that at said Keokuk & Hamilton bridge the channel used by steamboats is partly artificial, constructed by excavation of rock from the river bed to facilitate the approach to the lock of the U. S. canal immediately north from the bridge.

11 Par. 7. That the State of Iowa claims the right to tax all bridges across said river to the middle thereof, and, as of right it may do, taxes said Keokuk & Hamilton bridge to the middle thereof between the east and west abutments of said bridge—that

is, the west approach and abutment 200 feet and 1,096 feet of the bridge proper—thereby treating, for convenience of taxation, the middle of said bridge between abutments as the middle of said river at that point, but really 225 — less than one-half the distance across the main arm or body of said river at that point.

Par. 8. That the State of Illinois and its municipalities value, assess, and tax as in Illinois 716 feet of said bridge actually assessed and taxed in Iowa, and 225 feet of said bridge in addition thereto located in Iowa, but not taxed in said State of Iowa.

Par. 9. That the Keokuk & Hamilton Bridge Company, owner of said Keokuk and Hamilton bridge, is a corporation of both said States consolidated and complains of such double taxation.

Par. 10. That litigation is now pending over such taxation and is liable at any time to arise over the taxation of any of the other bridges across said river between said States, now numbering nine.

Par. 11. To the end that the line between said States be definitely fixed by the only court having jurisdiction to do so, your
12 oratrix prays that this court take jurisdiction of this bill; that the State of Illinois be summoned and requested to answer this bill, waiving such answer being on oath, and the cause be advanced to an early hearing, and upon final hearing definitely settle the boundary between said States at said several bridges; and for such other relief as shall appear equitable.

And as in duty bound will ever pray, &c.

JNO. Y. STONE,
Att'y Gen'l of Iowa, for Complainant.

JAMES C. DAVIS, *Of Counsel.*

(Endorsed:) Supreme Court U. S. 1891, October term. No. 11, original. The State of Iowa, complainant, *vs.* The State of Illinois. Bill of complaint. Filed Nov. 17, 1891.

13 And on the same day, to wit, on the 17th day of November, A. D. 1891, an answer was filed in the words and figures following, viz:

14 In the Supreme Court of the United States.

THE STATE OF IOWA, Complainant,
vs.
THE STATE OF ILLINOIS, Defendant. } Bill to Establish Boundary.

Answer of the State of Illinois to said Bill.

The State of Illinois, by George Hunt, its attorney general, for answer to the bill filed herein by the State of Iowa, or so much thereof as it is advised to answer, answering, says:

Respondent admits the statements in said bill contained in the first, second, third, fourth, and fifth paragraphs thereof.

Respondent denies that the boundary lines between said States of Iowa and Illinois is the middle of the Mississippi river, but insists

is the middle of the steamboat channel or channel most commonly used by boats in carrying the commerce of said river, whether at or east or west of the middle of said river; admits that the State and municipalities in the State of Illinois claim the right to and do tax bridge and other structures in said river to the middle of such steamboat channel or channel of commerce, regardless of whether such channel is east or west of the middle of the main body or arm of said river, and do value, assess, and tax the Keokuk & Hamilton bridge to the draw and considerably west of the middle of
15 the main body or arm of said river, but the exact distance from either shore this respondent is unable to state.

Admits the steamboat channel or channel of commerce of said river is first near one shore and then near the other, and at other places nearly across the river.

Denies that the middle of the steamboat channel or channel of commerce of said river at said Keokuk & Hamilton bridge is east of the east end of the draw of said bridge.

Denies the right of the State of Iowa to tax said Keokuk & Hamilton bridge to any point thereof east of the east end of the draw thereof or any other bridge east of the middle of the steamboat channel or channel of commerce of said river, though such channel may be largely west of the middle of the main body or arm of said river.

Admits the statements of paragraphs 9 of said bill.

And now, having fully answered said bill, prays that this cause be advanced and the line between said States be established and respondent be discharged with its reasonable costs, &c.

And as in duty bound will ever pray, &c.

GEO. HUNT,
Attorney General State of Illinois, for Defendant.

(Endorsed:) Supreme Court U. S. 1891, October term.
16 No. 11, original. The State of Iowa, complainant, *vs.* The State of Illinois. Answer to bill of complaint. Filed Nov. 17, 1891.

17 And on the same day, to wit, on the 17th day of November, A. D. 1891, a replication was filed in the words and figures following, viz:

18 In the Supreme Court of the United States.

THE STATE OF IOWA
v.
THE STATE OF ILLINOIS. } Equity. Bill to Establish Boundary.

Replication to Answer of Defendant.

The State of Iowa, by its attorney general, John Y. Stone, for replication to the answer of the defendant, The State of Illinois, says that the statements in said answer, so far as the same travers- or

deny the statements in complainant's bill, are not true, and that the statements in said complainant's bill are true.

JNO. Y. STONE,
Att'y Gen'l of Iowa.

JAMES C. DAVIS, *Of Counsel.*

(Endorsed:) Supreme Court U. S. 1891, October Term. No. 11, original. The State of Iowa, complainant, *vs.* The State of Illinois. Replication of the State of Iowa. Filed Nov. 17, 1891.

19 And on the same day, to wit, on the 17th day of November, A. D. 1891, a cross-bill was filed in the words and figures following, viz:

20 In the Supreme Court of the United States.

THE STATE OF IOWA
v.
THE STATE OF ILLINOIS. } Bill to Establish Boundary. Equity.

THE STATE OF ILLINOIS
vs.
THE STATE OF IOWA. } Equity. Cross-Bill to Establish Boundary.

Par. 1. Complainant in the cross-bill, The State of Illinois, having answered the bill of complaint filed herein by The State of Iowa, files this cross-bill of complaint against The State of Iowa in this the Supreme Court of the United States to define the boundary lines between the States of Illinois and Iowa at the several bridges across the Mississippi river and the extent to which each State and its municipalities may tax said bridges respectively, and shows to this honorable court that there now exists nine bridges across said river between said States, the most southern of which is the Keokuk & Hamilton Bridge Company's railroad and wagon bridge, and the most northern of which is the Dunlieth & Dubuque Bridge Company's railroad bridge.

Par. 2. That for the purposes of taxation the State of Illinois and its municipalities claim the right to assess and tax said respective bridges to the middle of the channel of commerce or steamboat channel—that is, the channel usually used by steamboats
21 and other crafts navigating said river; that on the part of the State of Iowa and its municipalities it is claimed that each State has the right to assess and tax to the middle of the main arm or body of the said river, regardless of where the channel of commerce or steamboat channel—that is, that part of the river usually traversed by steam or other vessels carrying the commerce of said river—may be.

Par. 3. That the supreme court of the State of Iowa, in case of the Dunlieth & Dubuque Bridge Company *vs.* The County of Dubuque, 55 Iowa, 558, 564, hold the authorities in Iowa have the right to tax such structures to the middle of the main arm or body of the stream and no further, though at the point where such structure is

situated the channel or part of the river followed by steamboat-men in navigating the river is far east of the middle of such main body of the stream.

Par. 4. That, following the decision in that case, the authorities in Iowa assess and tax such structures to the middle of the main body of said river.

Par. 5. That at the point of the location of the said Keokuk & Hamilton bridge the main body of the said river, before the construction of said bridge, was between the Iowa shore at Keokuk, Lee county, Iowa, and the west shore of Island No. 4, in section 30, township 5 north, range 8 west, located in the city of Hamil-
22 ton, town of Montebello, Hancock county, Illinois, a breadth of about 3,042 feet; that in constructing said bridge a solid approach is extended from the shore at Keokuk into the river 200 feet, and from said shore on Island No. 4, in Illinois, about 700 feet, and the main body of said river confined between the abutments to said bridge 2,192 feet apart, and said bridge consists of said east and west abutments, eleven piers, a draw next to the west or Iowa abutment of 380 feet and 10 spans, together 1,812 feet.

Par. 6. That the middle of the steamboat channel, or that part of the river usually traversed by steamboat-men in navigating said river, is at or near the east end of said draw or pivot span, about 380 feet from the west abutment and 1,812 feet from the east abutment.

Par. 7. That the assessor in Illinois in assessing said bridge values the bridge to the east end of said draw and assesses the same against that part of said bridge in Illinois, and the authorities in Iowa value and assess said bridge to the middle thereof, 1,096 feet east from the west abutment, as in the State of Iowa; that thereby 716 feet of said bridge is valued and assessed both in Illinois and Iowa; that litigation is now pending in the lower courts between said bridge company and the authorities over said assessments.

Par. 8. That the same trouble and complications are liable to arise over the assessment of any other of said bridges.

23 Par. 9. No other court having jurisdiction to settle in an authoritative way the extent to which said bridge structures can be legally assessed and taxed, and to the end that the boundary lines between the States of Illinois and Iowa at said several bridges may be defined and settled, the State of Illinois prays that the State of Iowa be made defendant to this bill and summoned and required to answer this bill, and that upon the final hearing this court define and establish at each of said bridges the boundary lines between the States of Illinois and Iowa, to which points the respective States may tax.

Par. 10. That as this matter relates to the revenue and is of great public importance, that the same be advanced on the docket and heard at the earliest practicable day, to the end that the revenue may be collected without delays by litigation our such right to tax.

And as is duly bound complainant will ever pray, etc.

GEO. HUNT,

Attorney General State of Illinois, for Complainant in Cross-Bill.

(Endorsed:) Supreme Court U. S. 1891, October term. No. 11, original. The State of Iowa, complainant, *vs.* The State of Illinois. Cross-bill of the State of Illinois. Filed Nov. 17, 1891.

24 And on the same day, to wit, on the 17th day of November, A. D. 1891, an answer to cross-bill was filed in the words and figures following, viz:

25 In the Supreme Court of the United States.

THE STATE OF IOWA *v.* THE STATE OF ILLINOIS.	Equity. Bill to Establish Boundary.
THE STATE OF ILLINOIS, Complainant, *vs.* THE STATE OF IOWA, Defendant.	Equity. Cross-Bill to Establish Boundary.

Answer of Defendant to the Cross-Bill.

Respondent, The State of Iowa, by John Y. Stone, its attorney general, for answer to the cross-bill of complaint filed herein, or so much thereof as it is advised is necessary to answer, answering, says:

Par. 1. Admit- that there now exist nine bridges across the Mississippi river where it forms the boundary between said States of Illinois and Iowa, the most southerly of which is the bridge of the Keokuk & Hamilton Bridge Company, and the most northerly is the bridge of the Dunlieth & Dubuque Bridge Company.

Par. 2. Admit- that said State of Illinois and its several municipalities bordering on said river claim the right to tax said bridges from the Illinois shore of said river to the middle of the channel of commerce or steamboat channel—that is, the channel usually used by steamboats and other crafts in navigating said river—and that this respondent, The State of Iowa, and its several municipalities bordering on said river claim the right to and do tax said several bridges to the middle of the main arm or body of said river, regardless of where the channel of commerce or steamboat channel—that is, that part of said river usually traversed by steam or other vessels carrying the commerce of said river—may be.

26

Par. 3. Respondent denies the right of the State of Illinois or any of its municipalities to tax any of said bridges or any other structure in said river west of or on the Iowa side of the middle of the main arm or body of said river.

Par. 4. Respondent admits as true the statements in said cross-bill contained in paragraph five thereof.

Par. 5. Respondent denies the statements of paragraph six of said cross-bill as stated, but admits that prior to the construction of the Keokuk & Hamilton bridge aforesaid the middle of the steamboat channel, or that part of the river at that point usually traversed by steamboat-men in navigating said river, was and now is considerably

west of the middle of the main arm or body of said river; the exact distance respondent is unable to state, but is informed and believes about 960 feet east of the Iowa shore of said river and about 2,082 feet from the Illinois shore on Island No. 4, in said bill mentioned.

Par. 6. Respondent is informed and believes that the State of Illinois and its municipalities, in which the east end of said
27 Keokuk & Hamilton bridge is situated, assess and tax as in Illinois fully 716 feet of said bridge, which is located in Iowa and taxed by the authorities in Iowa.

Par. 7. Respondent admits the statements of paragraph seven of said cross-bill.

Par. 1. Respondent admits the statements of paragraph eight of said cross-bill.

Par. 2. And now, having fully answered said cross-bill, prays that this suit be advanced, and that upon the final hearing said boundary may be established.

And as in duty bound will ever pray, &c.

JNO. Y. STONE,
Att'y Gen'l of Iowa.

JAMES C. DAVIS, *Of Counsel.*

(Endorsed:) Supreme Court U. S. 1891, October term. No. 11, original. The State of Iowa, complainant, *vs.* The State of Illinois. Answer of State of Iowa to cross-bill of State of Illinois. Filed Nov. 17, 1891.

No. 2 Orig.

Answer to Pet. to set aside Report &c

Filed Nov. 7, 1892.

Office Supreme Court U. S.
FILED
NOV 7 1892
JAMES H. MCKENNEY
Clerk

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1892.

2 Orig.

STATE OF IOWA, *Complainant,*

vs.

STATE OF ILLINOIS, *Defendant.*

ANSWER OF THE STATE OF IOWA TO THE PETITION OF THE STATE OF ILLINOIS, IN SUPPORT OF MOTION ON BEHALF OF SAID STATE OF ILLINOIS TO SET ASIDE THE REPORT OF THE COMMISSIONERS HERETOFORE MADE IN THIS CAUSE.

JOHN Y. STONE,
Attorney General, State of Iowa.

JOHN F. LACEY,
FELIX T. HUGHES,
JAMES C. DAVIS,
Of Counsel.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1893.

STATE OF IOWA, *Complainant,*

vs.

STATE OF ILLINOIS, *Defendant.*

ANSWER OF THE STATE OF IOWA TO THE PETITION OF THE STATE OF ILLINOIS, IN SUPPORT OF MOTION ON BEHALF OF SAID STATE OF ILLINOIS, TO SET ASIDE THE REPORT OF THE COMMISSIONERS HERETOFORE MADE IN THIS CAUSE.

Now comes the State of Iowa, by John Y. Stone, Attorney General, and for answer to the petition of the State of Illinois, in support of its motion, filed in this cause on the 11th day of October, 1893, in which motion said State of Illinois seeks to have the order confirming the report of the commissioners set aside, respectfully represents :

1st. Said State of Iowa denies that this Honorable Court in this proceeding has jurisdiction to grant the relief asked by the State of Illinois in its said motion, and alleges that the order and decree of this Court confirming the report of the Commissioners

heretofore filed in this cause was entered on the 10th day of April, 1893. That said order and decree of this Court so confirming the report of said Commissioners was in the nature of a final decree so far as same referred to the boundary line between the State of Iowa and the State of Illinois, at the point where the Keokuk & Hamilton Bridge crosses the Mississippi River, said decree having been entered by this Honorable Court during the continuance and existence of the October Term, 1892, of this Court. That during said October Term, 1892, of this Court, no steps were taken by the State of Illinois to have changed, vacated, altered or modified said decree so confirming said report of said Commissioners, and no petition for rehearing or other proceeding was instituted by said State of Illinois during the continuance and existence of said October Term, 1892. That no proceeding looking to a modification of or vacation of said decree was commenced on behalf of the State of Illinois until the application to file the present motion, which was presented to this Honorable Court on or about the 11th day of October, 1893, long after the October Term, 1892, of this Court had expired.

It is, therefore, contended by the State of Iowa, that this Honorable Court has no jurisdiction and no authority upon summary motion, during the October Term, 1893, to alter, vacate or modify the final decree of this Court, made and entered during the October Term, 1892, of this Court.

2d. The State of Iowa, for further answer to the petition of the State of Illinois, alleges, that prior to the 10th day of April, 1893, M. T. Maloney, Attorney General of the State of Illinois, and the officer and

counsel for the State of Illinois, who has had charge of the case herein above described on behalf of the State of Illinois, had full and complete knowledge and notice that the said Commissioners, in accordance with their appointment and with the decree of this Honorable Court, had located the boundary line between the said States of Iowa and Illinois, and that said Commissioners' report had been forwarded to Washington for further action of this Honorable Court, and the State of Iowa alleges that the said M. T. Maloney, Attorney General of the State of Illinois, on the 26th day of March, 1893, by telegram, in words and figures, following, to-wit:

Mar. 26th, 1893. SPRINGFIELD, ILL.

W. I. HAYES, Cr. J. H. Cole, Wash'n.

You are authorized to appear in Sup. Court of U. S. in case of Iowa v. Illinois, and consent to the confirmation of the report of Commission as to line at Keokuk and Hamilton Bridge.

[Signed.] M. T. MALONEY.

authorized and directed Mr. W. I. Hayes, an attorney and counselor of this court, to appear for the State of Illinois and agree that this Honorable Court might confirm the report and action of the said Commissioners in locating said line between the State of Iowa and the State of Illinois.

The said state of Iowa further alleges that said order of confirmation of the report of said Commissioners was made, not only with notice to the said State of Illinois, but the said report was acquiesced in and agreed to by the said State of Illinois, through its said Attorney General.

The State of Iowa, therefore, alleges that the State of Illinois is now barred and estopped from objecting to the said order confirming said report of the Commissioners, and said finding and report of said Commissioners, as to the parties to this controversy, has become final and conclusive.

3d. And further answering, the said State of Iowa admits that on January 3d, 1893, a decree was entered in this cause wherein it was ordered, adjudged and declared by this Honorable Court that the boundary line between the said State of Iowa and said State of Illinois, was the middle of the main navigable channel of the Mississippi River.

Admits that on the 6th day of March, 1893, at the joint request of said State of Iowa and said State of Illinois, Montgomery Meigs, John R. Carpenter and Albert Wempner, were appointed as Commissioners by this Honorable Court to ascertain and locate said boundary line.

Admits that on the 30th day of March, 1893, the report of said Commissioners, prepared in writing, was filed in this Conrt, wherein they reported that the boundary line between the said State of Iowa and the said state of Illinois on the Keokuk & Hamilton Bridge had been located at a point 1041 65-100 feet east of the center of the draw span of said bridge.

The State of Iowa alleges that said report bears date March 23d, 1893, at which time said Commissioners had plainly marked upon said bridge said dividing line.

Admits that on the 10th day of April, 1893, by decree of this Honorable Court, the report of said Commissioners was duly confirmed, but denies that said

order of confirmation was made without notice to the State of Illinois, but on the contrary, charges and alleges, that said confirmation was made, not only with notice to the said State of Illinois, but by the consent and agreement of the said State of Illinois.

The State of Iowa, for further answer, alleges that the Commissioners in ascertaining and determining the said boundary line were governed by the opinion and decree of this Court, as entered in this cause, and avers that the boundary line as located by the said Commissioners was the middle of the main navigable channel of the Mississippi River, as same is located at a point where the Keokuk & Hamilton Bridge crosses said River.

Denies that said Commissioners were in ignorance of the terms and conditions of the decree and opinion of this Honorable Court.

Denies that said Commissioners willfully disregarded the decision and decree of this Court, or that they totally misunderstood same, but alleges that the middle of the main navigable channel of the Mississippi River at the point above indicated, except where impeded or obstructed by artificial means, is as was located and reported by said Commissioners, to-wit: at a point 1041 65-100 feet east of the centre of the pivot or draw span of the Keokuk & Hamilton Bridge.

In support of the allegations of this answer, the State of Iowa respectfully refers to and submits to the Court the affidavits plats and additional report of said Commissioners herewith attached.

Wherefore, having answered thus fully, the State of Iowa prays that the motion as made by the State

of Illinois be overruled, and the petition in support of said motion be dismissed.

JOHN Y. STONE,
Attorney General, State of Iowa.

JOHN F. LACEY,
FELIX T. HUGHES,
JAMES C. DAVIS. } *Of Counsel.*

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,
vs.
THE STATE OF ILLINOIS.

State of Iowa,
County of Clinton, } ss.

Walter I. Hayes, being by me first duly sworn, deposes and says that he is an Attorney and Counselor at Law, and a member of the bar of this Court. That in March, A. D. 1893, he was employed and retained to represent the State of Iowa in the matter of the confirmation of the report of Commissioners to fix the boundary line between said States, at the Keokuk and Hamilton Bridge. That on the 26th day of March, A. D. 1893, he received a telegram from M. T. Maloney, who, as he then understood and now understands, was Attorney General of the State of Illinois, the original of which telegram is hereto attached and marked "Exhibit A." That acting under said telegram, and engagement by the State of Iowa, he appeared in this Court, made the motion for confirmation, and prepared the entry therein, and consented thereto in behalf of the State of Illinois. That in some way he conceived the idea that J. H.

Cole was an Attorney in this case, although his name does not so appear upon any of the briefs or other papers connected with this suit, and that acting upon this idea, he signed the name of said Cole as one of the attornies, and that said J. H. Cole had no knowledge thereof, and is not an attorney of any Court as he now understands.

WALTER I. HAYES.

Subscribed and sworn to before me and in my presence, by said Walter I. Hayes, this 30th day of October, 1893. Witness my hand and seal.

[SEAL] FRANK THORNBURG,
Notary Public in and for said County and State.

EXHIBIT A.

WESTERN UNION TELEGRAPH COMPANY.

* * * * * * * *

Number 47 ny. Sent by tz. Rec'd by Bn. 35 pd.

Received at Corcoran Bldg., S. E. Cor. 15th & F Sts., Washington, D. C., Mar. 26, 1893. Dated Springfield, Ill., 26:

To Walter I Hays, Cr. J. H. Cole. Washn.

You are authorized to appear in Sup. Court of U. S. in case of Iowa v. Illinois and consent to the confirmation of the report of Commissioner as to line at Keokuk and Hamilton Bridge.

M. T. MALONEY.

IN THE SUPREME COURT OF THE UNITED STATES.

STATE OF IOWA, *Complainant*, *vs.* STATE OF ILLINOIS, *Defendant*. } No. 5 Original. Oct. Term, 1893.

State of Iowa, } ss.
Lee County, }

We, Montgomery Meigs and John R. Carpenter, two of the Commissioners heretofore appointed by this Honorable Court, to mark the boundary line between the State of Iowa and the State of Illinois, do, herewith, present to the Court an additional statement as to the facts connected with the report heretofore made by us, and for that purpose, upon our respective and separate oaths, do say :

I, Montgomery Meigs, state that I am a resident and citizen of the City of Keokuk, Lee County, Iowa, and have been such citizen and resident since the year 1882 ; that during such period I have been in the employ of the United States government in connection with the improvement of the Mississippi River in the vicinity of Keokuk, Iowa, and Hamilton, Illinois ; that I am at present a United States government civil engineer, being assistant in charge of improving and operating the Des Moines Rapids Canal ; that I am also assistant in charge of the construction and improvement of the Mississippi River from Keithsburg, Illinois, to Montrose Iowa, and am further assistant in charge of the improvement of said River from Keokuk, Iowa, to Quincy, Illinois.

And I, I John R. Carpenter, on my oath, do state that I am a citizen and resident of the City of Keokuk, Lee County, Iowa, and am at present in the employ of the United States government as superintendent

of the improvement on the Mississippi River ; that I have been connected with the construction and operation in the vicinity of the City of Keokuk, Iowa, of the Des Moines Rapids Canal and river improvements on the Mississippi River, since the year 1870.

We, each of us, upon our respective oaths, do say that for many years last past we have been, by reason of our respective callings, by experience, observation and actual measurements, familiar with the bed of the Mississippi River at about the point where the Keokuk and Hamilton Bridge crosses said river ; that before proceeding with our respective duties as such Commissioners we obtained all the information that was possible to obtain by observation and inquiry as to the character of the channel and its location in the Mississippi River at said point so crossed by the Keokuk and Hamilton Bridge, and in the course of our investigation we examined authenticated maps and soundings made by the engineering corps of the United States army during the last fifty years, as well as other authenticated maps and soundings from surveys of said river prior to the construction of the Keokuk and Hamilton Bridge ; that in determining the point at which the boundary line as between said State of Iowa and said State of Illinois should be located, we were controlled by the language of the opinion of the United States Supreme Court in the above entitled cause, the following paragraph being, as we understood, a summary of the opinion of the Court upon that proposition, to-wit :

" The true line in navigable rivers between the states of the Union which separate the jurisdiction of one from the other is the middle of the main channel

of the river. Thus the jurisdiction of each state extends to the thread of the stream, that is, to the mid-channel, and if there be several channels, to the middle of the principal one, or, rather to the one usually followed."

And this Court further, in providing for the form of decree to be entered, said:

"The boundary line between the State of Iowa and the State of Illinois is the middle of the main navigable channel of the Mississippi River,"

That from our examination of the bed of the Mississippi River at the point where crossed by the Keokuk and Hamilton Bridge we located the boundary line with reference to the navigability of said river and not with reference to the east and westerly bank of the said river, and we determined the true boundary line between the said two states about 1041 65-100 feet easterly of the center of the pivot pier of said bridge.

We desire to submit to the Court the following facts in connection with our report:

The Mississippi River at a point between the City of Keokuk, Iowa, and Hamilton, Illinois, is divided by an island which is separated from the Illinois shore by the Hamilton slough, forming an island known as Island No. 4. This slough at one time formed a steamboat channel, and while it is no longer used by steamboats except in high water, yet its value as a steamboat channel has been insisted upon by the residents and citizens of Hamilton, Illinois, at different times, and the government has been urged by them to restore it to its former condition of navigability. On the westerly side of said

island the main stream separates it from the Iowa shore and this main stream forms the main channel of the Mississippi River in its broad sense. Within the bed of the main stream there is an artificial channel in the narrower sense, lying along the Iowa shore which is purely artificial and was excavated in the solid rock as part of the improvement connected with the construction of the Government Canal, and was built to enable boats to surmount the so-called Des Moines Rapids, the said rapids lying northerly from said bridge, and in extreme low water or even moderately low water, said rapids are only navigable for crafts not drawing more than from twelve to twenty-four inches. This artificial channel lying next to the Iowa shore is the only channel that at present can be used at low water by steamboats in going up or down the Mississippi River, by reason of the fact that the Rapids above the bridge are unnavagable at all low stages of water. The draw of the Keokuk and Hamilton Bridge is located at this point, and said bridge being a low bridge, steamboats are obliged to pass through said draw, but your Commissioners believing that under the opinion of this Honorable Court, as rendered in the above entitled cause, they were not limited to the artificial channel which was constructed since the year 1867, but in accordance with the opinion of this Court, were to ascertain the middle of the main navigable channel of said river as same existed previous to the recent construction of the artificial channel, constructed by the government of the United States in connection with the Des Moines Rapids Canal. Your Commissioners, therefore, in locating said boundary line, after making investigations and measurements, took a point 500 feet east of the easterly Illinois abutment

of said bridge, said abutment having been constructed about 700 feet into the river west of the original shore of Island No. 4, and then measured westerly to a point about 200 feet west of the abutment of the Iowa shore said abutment being about 250 feet east of the Iowa shore. The bed of said river between said points last above designated is composed of solid rock and in an average stage of water would have a least depth of about nine feet, and in extreme low water there would be a continuous depth, were it not for the artificial obstruction, in excess of three feet. The bed of the river at that point is composed of solid rock and the force of the current coming from the Des Moines Rapids above is sufficient to keep same free and clean from accumulations of sand and deposits unless same occurs from the artificial extension of the shore line, or obstructions, such as the dsposit of rock in the said river. That from the personal knowledge of your Commissioners, as well as from their investigations, they were satisfied, and so say upon oath, that prior to the obstruction of said river by artificial means, the Misissippi River between said points was navigable for boats that ordinarily navigate the Mississippi River at this point. That for many years prior to the building of the Keokuk and Hamilton Bridge, large ferry boats navigated said river over, along and across said point, some of said ferry boats being of sufficient capacity to accommodate, at one time, forty-four loaded teams, and said river about said point was navigable from the westerly shore of Island No. 4 to the easterly Iowa shore for said large boats at all seasons and times of the year, except when navigation was prevented by reason of ice in the river. That previous to the construction of said bridge, railroads had established a

depot on the west bank of Island No. 4, about 700 feet east of where said bridge terminates, and steamboats engaged in navigating said river made regular landings, received and discharged freight at said point.

Your Commissioners state that the whole width of the main arm of the Mississippi River between the points above specified, from which we took our measurements prior to the construction of the Keokuk and Hamilton Bridge, was the channel of navigation of the said Mississippi River. The said ferry boats with their numberless trips would far outweigh all of the other traffic on the said river, and your Commissioners further found that other boats engaged in ordinary commerce on the river used said channel at different points, and landed, received and discharged freight from the Illinois shore at or about a point 700 feet east from where said Keokuk and Hamilton Bridge abutment now rests.

The attention of your Commissioners has been called to a survey of the bed of the said Mississippi River, attached as an exhibit to the affidavit of Thomas McMath used in support of the motion to set aside the finding of your Commissioners. Said soundings seem to have been taken directly beneath the said Keokuk and Hamilton Bridge, and said map and survey does not correctly show the condition of the bed of said river as same would be were it not for certain artificial changes that have been made therein. The soundings made by Engineer McMath on September 13, 1893, were taken when the river was only 4-10 of a foot above extreme low water stage. This extreme low water stage was thus attained by the river in 1864, and has been only once

repeated since that time, except during ice gorges, when the river fluctuates rapidly and irregularly, and navigation is entirely suspended. Five feet below low water of 1864, is the grade established for the permanent improvement of the rapids, by the construction of the Des Moines Rapids canal, on which work nearly $5,000,000 has been already expended by the United States government. The present aim of the government engineers on open river improvements is to obtain a minimum channel of 4½ feet at extreme low water, and while such improvements have eliminated many difficult places in the river, there are many still remaining unimproved. In 1891 the low water of 1864 was repeated for the first time since that date. In that year there were places where there was but thirty inches in the channel, and at extreme low water, bars with but three feet of water over them were of not infrequent occurrence in the the ordinary channel of the river as used by steamboats. This depth of water is too low for the larger side wheel packets, but the larger stern wheel packets can keep up navigation, and do so, on three feet of water. Raft boats in general are built to draw about thirty inches of water, and these raft boats at present do at least nine-tenths of the actual commerce carried on on the upper Mississippi above St. Louis. Mr. McMath's profile shows that the general level of the river bed along the Keokuk and Hamilton Bridge is more than three feet at extreme low water, allowing for artificial obstruction now existing under said bridge.

Referring, again to the profile as made by Engineer McMath, at station 1400 as marked upon said map there is indicated a depth of but one foot and six inches. This shallowness at this point is occa-

sioned by the soundings having been taken upon the remains of a temporary pier located in 1881 to support two wooden spans that were put in in said bridge in the place of a long iron span that was destroyed by a collision with the steamer War Eagle in that year, said temporary pier having been only partially removed. The shallow water indicated in the vicinity of station 950 on said map is by reason of soundings having been taken upon a pile of rip rap rock thrown in to strengthen a pier of the bridge that had been moved out of line by the ice. In fact the accumulation of stone by ice movements, and by the obstructions placed in the river since and during the construction of said bridge, and scattered in the vicinity by the same agency, have to some extent changed the natural bed of said river from what it was before the construction of said bridge, and have caused accumulations in connection with said masses of rock, that may cast some doubt upon the accuracy of any profile of said river bed taken at this time. For many years the material dredged annually from the United States canal has been dumped just below the bridge and close to it, and this would result in more or less filling about said bridge. The deep water shown in Engineer McMath's plat in the vicinity of station 1600, is a hole or pocket in the bed of the river, which fades away in shallows a short distance above and below said point. From the investigation we were able to make, from a careful examination of well authenticated plats and soundings made of said river bed before the construction of said bridge, from personal intercourse with men who were well acquainted with the channel of said river prior to the construction of said bridge, and from our own personal

knowledge and experience, we conclude that under the provisions of the opinion of this Court in the above entitled cause, the main channel of the Mississippi River which was navigable for steamboats that ordinarily navigate said river,—eliminating from same recent artificial obstructions—is between a point 500 feet east of the easterly end of said bridge, and 200 feet west of the westerly end of said bridge.

We further desire to say that we have absolutely no interest of a personal character whatever in this matter; that we were not approached or spoken to by any attorney, agent or officer of the Keokuk and Hamilton Bridge or of the State of Iowa prior to our appointment or subsequent thereto, except as we may have had occasion to call upon said officers for information or records in their possession. That the Superintendent of the bridge, Mr. John H. Cole, expressly stated to us that the place where the boundary line was marked by said Commissioners was a matter that was entirely immaterial to the Bridge Company; their only desire being that the same should be definitely and permanently fixed.

We further desire to state that we gave the opinion of this Honorable Court careful consideration, and our measurements and determination of the boundary line were made as we believed in exact accordance with the letter and spirit of said opinion. That in pursuance of our appointment as Commissioners in the above entitled cause, we completed our report as Commissioners on the 23d day of March, 1893, and on the 23d day of March, 1893, after properly signing and verifying same, said report was forwarded to the Clerk of this Honorable Court and

at the time of completion of said report we plainly marked upon the structure of the Keokuk and Hamilton Bridge a line which would indicate the boundary line between said State of Iowa and said State of Illlnois.

MONTGOMERY MEIGS.
JOHN R. CARPENTER.

Subscribed and sworn to before me, this 30th day of October, 1893.

[SEAL.] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

STATE OF IOWA, *Complainant*,
vs.
STATE OF ILLINOIS, *Defendant*. } No. 5 Original.

State of Iowa, }
Lee County, } ss.

I, Albert Wempner, upon my oath, duly administered, do depose and say:

That I am one of the Commissioners heretofore appointed by this Honorable Court in the above entitled cause, to locate the boundary line between the State of Iowa and the State of Illinois; that I am by profession a pilot of the Mississippi River, having had since 1852 continuons experience in navigating said river at various points from St. Louis, Mo., to St. Paul, Minn.; that I am the same Albert Wempner who made an affidavit on behalf of the State of Illinois in the controversy pending in the State Court of said State, a copy of said affidavit appears in con-

nection with the motion on behalf of the State of Illinois to set aside the report of the Commissioners heretofore made. That I have not had submitted to me the original of said affidavit and as to the correctness of the copy I am unable at this time to state. I state, however, that the said affidavit said to have been made by me on or about the 25th day of April, 1891, was made, to some extent, upon a misapprehension of the facts; that while acting as pilot upon the Mississippi River, boats engaged in the carrying trade, going north of the City of Keokuk, as a matter of convenience, ordinarily selected a channel running nearer the Iowa shore than to the Illinois shore; that where my affidavit states "that said boats could not go easterly at a point in the vicinity of the Iowa shore in said channel," I was mistaken, and that portion of the affidavit was not called to my attention at the time of making same, as I have personally known for a great many years that the Mississippi River at a point between Keokuk, Iowa, and Hamilton, Illinois, at the place where the Keokuk and Hamilton Bridge is located, was prior to the location of the bridge, navigable for steamboats engaged in the commerce of said river. I had personal knowledge of the fact that large ferryboats made many trips daily between said points. I know of the location of warehouse and steamboat landing on the westerly bank of Island No. 4, some 700 feet east of the present Illinois abutment of the Keokuk and Hamilton Bridge; that boats engaged in the ordinary commerce on said river, landed at said warehouse for the purpose of discharging and receiving freight; that when appointed as a Commissioner by this Court, I made a careful examination of the bed of said river, examining plats, and surveys of the bed of same, with a view

of ascertaining the middle of the main navigable channel of the Mississippi River at the point where the Keokuk and Hamilton Bridge is located; that after making said particular examination I became satisfied that the middle of said navigable channel, eliminating artificial obstructions, was at a point midway from a point 500 feet east of the easterly or Illinois abutment of said bridge and a point 200 feet westerly from the west abutment of said bridge, and so believing, in connection with the other Commissioners appointed in said cause, we located the boundary line between the State of Iowa and said state of Illinois at such point.

I further state that I have read the additional report and statement as made by Montgomery Meigs and John R. Carpenter, bearing date October 30th, 1893, and I believe that the facts stated in said additional report and the conclusions arrived at in said report, are true and correct.

ALBERT WEMPNER.

Subscribed and sworn to before me, this 31st day of October, 1893.

[SEAL.] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

STATE OF IOWA, *Complainant,*
vs.
STATE OF ILLINOIS, *Defendant.*
} No. 5 Original.

State of Iowa, }
Lee County, } ss.

I, John R. Carpenter, upon my oath, do say, that I am the John R. Carpenter who acted as one of the Commissioners in this cause; that subsequent to

the finding of the Commissioners I had a conversation with Mr. J. L. Miller, an attorney at law of Hamilton, Illinois, in relation to the location of the line by the Commissioners. Mr. Miller asked me how the Commissioners came to locate the line where they did. I said the Commissioners understood the meaning of the opinion of the Supreme Court was, that the middle of the main navigable channel of the Mississippi River was the boundary line between the State of Iowa and the State of Illinois; that we ascertained what, in our opinion, was the middle of said main navigable channel of said river, and after so ascertaining measured the line accordingly. Mr. Miller said, after my explanation, I can readily see how you arrived at your decision; that I am living at Hamilton, Illinois, and of course as a citizen of Hamilton, was a little prejudiced in favor of Hamilton. I told him the Commissioners were not in favor of either Iowa or Illinois and had no choice in the matter; that we located the line where we thought the Supreme Court intended it should go.

JOHN R. CARPENTER.

Subscribed and sworn to before me, this 30th day of October, 1893.

[LEAL] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,

vs.

THE STATE OF ILLINOIS.

State of Iowa, } ss.
Lee County. }

O. S. Willey, being by me first duly sworn, deposes and says, as follows:

I am a resident of Keokuk, Iowa, and by profession a draughtsman, in which profession I have been engaged for 40 years. For the past 20 years or more, employed by the United States. In 1869 I was engaged by the Keoknk and Hamilton Bridge Co. to prepare maps, plans, &c., for the erection of a bridge across the Mississippi River at Keokuk, Iowa, by said Company. From the original surveys and soundings of the river at that point I prepared a profile of the bed of the Mississippi River, from which, on October 20th, 1893, I made a correct and true copy, which is attached to this affidavit, and marked "Exhibit D." The same is correct in every particular as herein stated and as noted on said profile.

[SEAL] O. S. WILLEY.

Subscribed and sworn to before me, this 31st day of October, 1893.

WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

STATE OF IOWA, *Complainant*,
vs.
STATE OF ILLINOIS, *Defendant*. } No. 5 Original.

State of Iowa, }
Lee County. } ss.

I, John H. Cole, being first duly sworn, do depose and say, as follows:

I am a citizen of Keokuk, Iowa, a civil engineer by profession, and for the past twelve years have been the Superintendent of the Keokuk and Hamil-

ton Bridge Company, but have no pecuniary interest in said corporation whatever. I am familiar with all the litigation between said Company and the various municipalities of Illinois over the question of taxation, in which in a number of cases, Mr. A. W. Green has appeared as counsel for the City of Hamilton and Township of Montebello, being the township in Illinois in which the City of Hamilton is located, and being the same person now appearing as counsel for Illinois in this case, all of which culminated by agreement between both parties, and at the suggestion of the attorneys of Illinois in invoking the aid of the States of Iowa and Illinois to determine the question of the boundary lines, as under the constructions of the lower Courts, both States were claiming the same property for assessment.

On the appointment of the Commissioners to fix the line, the question arose as to who should pay the expense of said Commission, and it was found that there was no fund available for that purpose in either state, nor would there be until after the meeting of their respective Legislatures. As several suits between the parties particularly interested were waiting the determination of this question, and as a new assessment was very soon to be made in Illinois, the Keokuk and Hamilton Bridge Co., through me, agreed to pay all reasonable expenses of said Commission in fixing the line of their property, and accordingly, at the proper time, I paid said Commissioners the sum of one hundred and fifty dollars, being fifty dollars each for their services, and about fifteen dollars for map making, copying, etc. In paying this sum I fully expected to ask the states interested when their legislatures met, to reimburse said Bridge Company, and only did it to further the settlement

of other suits and avoid litigation over another assessment that might be made to the wrong point. I know Mr. J. L. Miller, whose affidavit is filed with the others by the State of Illinois, and who says he is one of the attorneys employed by the municipalities of Illinois in the litigation with the Bridge Company, and see said Miller crossing the Keokuk and Hamilton Bridge very frequently, and as the Commissioners mark upon said bridge is plainly indicated by two broad bands of different colored paints, and is and was of common notoriety, know that said Miller must have had knowledge of the point at which said line was fixed at or about the time said line was fixed, to-wit: March 23d, 1893. I am also acquainted with the Mess. Glazebrook and Blackmore who signed a joint affidavit as to their connection with making the profile prepared by Mr. McMath. Mr. Glazebrook is the ex-mayor of the city of Hamilton and the supervisor for the township of Montibello in which Hamilton is located, and Mr. Blackmore is the assessor for said township. Both of these men cross the bridge very often and must have had knowledge of the marking of the line on the bridge by the Commissioners very soon after it was done, and both of them know that the measurements or soundings taken at station 1400 upon said profile were taken on top of an old wooden pier placed in the river by the Bridge Company in 1881. There can be no doubt but what they knew the sounding taken at "Commissioners Mark" on said profile did not go to the bed of the river, as the rock thrown in to protect the pier at that point could be plainly seen at the time the soundings were taken. I have read all the affidavits filed by the State of Illinois on the motion of her Attorney General to set aside the

order confirming the report of commissioners to fix the boundary line between the States of Iowa and Illinois. H. S. Brown, one of the deponents, in that motion, says;

"That the deepest water was, at that time, at a point about 250 feet from the Iowa shore line." Having been for five years the city engineer of the City of Keokuk, I have had knowledge of all the maps, etc., of said city and a careful measurement 250 feet from the shore line as plainly shown upon the original map of Keokuk, towards the river brings you to a point about 50 feet west of the west abutment of the Keokuk & Hamilton Bridge and where there is no water at the present stage, to-wit; 1.4 feet above low water mark, which is a better stage than he says was in the river at the time he made his examination which he says was "during extreme low water." From soundings I have found that even another 250 feet further into the river will not find the deepest water.

I have also read the affidavit of Thomas B. McMath, and examined the profile prepared by him of the bed of the river and from soundings taken at station 1400 on said profile I know that they were taken from the top of an old pier that I put in to carry some wooden spans in the fall of 1881, as the bed of the river is at least 5 feet below the indicated bed upon that profile. At the point marked "Commissioners mark" the soundings do not go to the bed of the river but only to the sand and debris that has accumulated around the pier near there and where great quantities of rock were thrown in by me to save the pier from being pushed out by the ice, a slight movement from this cause having taken place. The original bed of the river here is at least 2.5 feet below the point indicated upon said pro-

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file. From repeated examinations of profiles made of the bed of the river at this point by the United States Engineers, the city engineer of Keokuk in 1867, and the engineers of the Bridge Company, before locating the bridge, I believe the river bed between Keokuk, Iowa, and Hamilton, Illinois, to be practically one broad and comparatively level ledge of rock with here and there a hole or pocket worn deeper in some soft places in the rock, with no obstruction to navigation by any steamer, that is used in the commerce of said river at this point, and that the profile of said McMath does not correctly show the bed of the river in that it represents obstructions to the navigation of the river that are solely artificial, as I have found by repeated soundings reduced the low water mark of 1864. During my twelve year's experience as superintendent of this company with an office upon the west approach of the bridge, I have had opportunity to observe the course of a great many boats, as there have gone through the draw of said bridge as many as 3000 craft in one season, and I have never, even when the water was below the low water mark of 1864, which is the government base for reference, seen any kind of a craft strike or have any trouble in going over a point 400 feet east of the Iowa shore or 150 yards below said bridge.

I have seen a very great many times, steamers crossing and recrossing the river in all directions both above and below said bridge with tows of lumber, willows and the dump boats of the U. S. dredging fleet. In extreme low water it is of frequent occurrence that lumber is brought out of the Des Moines Rapids Canal and taken across the river and pushed up as far as possible under the east span of said bridge, and then for the boat to get in above the

bridge along the Illinois shore and pull the tow into the deep water from there. Such an occurrence happened on the 23d and 24th day of October, 1893, with a stage of water 1.4 feet above low water. The pivot spans of said bridge were located at their present location by order from the United States Engineering Corps in order that boats could get in and out the Des Moines Rapids Canal, which terminates about 1000 feet above the bridge. Afterwards and before the canal was opened for business a channel was blasted out of the rock from below the west opening of the pivot span to the lower lock of said canal.

J. H. COLE.

Subscribed and sworn to before me this 30th day of October, 1893.

[SEAL.] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

STATE OF IOWA,
vs.
STATE OF ILLINOIS, } Original.

On motion of State of Illinois to vacate order approving report of commissioners.

State of Iilinois,
Hancock Connty. } ss.

George Edmunds, of Carthage, in said county, being duly sworn, says that he is nearly seventy-two years of age. That he has resided in Hancock and Adams counties, in Illinois over forty-eight years. That during the summer and part of the fall of 1845 he resided at Keokuk, Lee County, Iowa, and for five

years, next thereafter at Nauvoo, Hancock County, Ill. the next five years he resided at Quincy. Illinois, and since that continuously in Hancock County. That during all that time he has been engaged (among other things) in practicing law. That during the years 1846 and 1847 he, as a civil engineer, made a survey of the east side of the Mississippi River the whole length of the Des Moines Rapids of said river (said rapids extending from Nauvoo, Illinois to Hamilton, Illinois, and Keokuk, Iowa) with a view of presenting profiles to enable parties to raise money to construct a canal for hydraulic purposes, and at that time was very familliar with the depths of water on said rapids, as also between where Hamilton now is, and Keokuk, for half a mile or more below the lower chain of said rapids. That deponent believes said river, during the latter part of the summer and early fall of 1846, was as low if not lower than at any time since. That in 1845 and 1846 the original westerly SHORE of Islands Nos. 2 and 4 and of the towhead at the westerly end of Island No. 4, was substantially as indicated upon the plat attached hereto and marked "Exhibit A," where marked original shore line, and so remained until after the road, dam and dyke were built by the ferry company across Island No. 2, the slough between Islands No. 2 and 4 and the towhead and extending into the river about 300 feet: said dyke being marked on plat as dyke No. 1, and said road extending from the main shore in Illinois from what is now the west end of Main street, in Hamilton, to said dyke across said Island No. 2, dam and towhead. The west shore of said Island No. 2 being at this date substantially as it was in 1845 and 1846 above said dam. That the construction of said dam and dyke changed to a considerable extent the course

of the current in the easterly part of said river, and in the opinion of deponent caused deposits of sand below said dyke where before the bottom had been smooth rock, with occasional small depressions.

That in the opinion of deponent, before the construction of said dam and dyke any steam (or other) boat that could pass over said rapids at any stage, high, low or medium water, could as easily and safely pass over any part of said river between said Island and said Iowa shore, as it could pass over said rapids. That the distance from the lower chain of said rapids to said bridge, is about one half mile, may be something more.

That deponent was the attorney of said Ferry Company, and as such aided in securing license, charter, etc., for said company, and as engineer advised as to the locating of said road, dam and dyke, said road, dam and dyke being shown on said plat crossing said shore line. That said dyke extended northwest from the west shore of towhead at the northeast end of Island No 4, about 300 feet, and perhaps more; and its west and northwest front formed the ferry landing for a number of years, until about the time the railroad was located, when it was run from the main land to the then river, now east end of the approach of the Keokuk and Hamilton Bridge, when a road was constructed by the ferry company southwesterly along the river bank on Island No. 4, to where said plat shows a second dyke extending into the river some 700 feet from the then shore, and perhaps more; and which dyke is immediately north of said bridge approach. Said dyke was constructed by said Ferry Company. The construction of this dyke shortened the distance to ferry about one-quarter of a mile.

Deponent was one of the contractors for the delivery of stone for the basement of the State house at Springfield, and before the construction of said bridge, planned, and had constructed a track from the then Wabash depot at Hamilton, northwestward along said second dyke about half or two-thirds of its length, and there constructed derricks for the deliv- of stone from boats to cars, at which the great mass of the stone for the State house was transferred. The stone was principally brought on flat boats or barges towed by a steamboat to and from said place of unloading.

The deponent has been the attorney of the Keokuk and Hamilton Bridge Company in Illinois, ever since the construction of said bridge in 1871. That the authorities of Hamilton, Illinois, assumed, after the construction of said bridge, that the state line between Illinois and Iowa was at the east end of the draw of said bridge, 380 feet east of the west abutment of said bridge, and 580 feet east of the Iowa shore of the river, and 1812 feet west of the east abutment of said bridge, and over 2,500 feet west of the east shore of said river on said Island No. 4; and the Iowa authorities assumed the right to tax said bridge to its center, thereby making a double assessment of 716 feet of said bridge proper. Litigation was commenced in Illinois to get rid of that excess of taxation, some of which is yet pending.

Deponent on behalf of the Bridge Company applied to Attorney General Hunt to bring suit in this Court against the State of Iowa in the name of the State of Illinois. Mr. Hunt refused to bring the suit, but said if Iowa would bring the suit, he would appear and answer for Illinois. Thereupon, application was made to the Attorney General of Iowa and this

suit was brought; and in this cause Commissioners were appointed and made report as to the Keokuk and Hamilton Bridge, which was filed and motion made for confirmation by the State of Iowa, March 30, 1893. On Saturday 1st, or Monday 3d of April, 1893, deponent was at the Attorney General's office of Illinois at Springfield, and there informed either the Attorney General or his assistant that said report had been filed and motion for confirmation made, and as the time to make a new assessment was near at hand, requested that the matter be attended to at once. At that time deponent had no knowledge as to what that report contained; he only had learned the fact of filing report and motion by telegraph, without detail thereof.

Deponent further says that he did not employ James C. Davis as an attorney in this cause. That never, to deponent's knowledge, has he spoken to the said Davis on the subject of this suit until since this motion was made.

GEORGE EDMUNDS.

Subscribed and sworn to before me, October 28th, 1893. Witness my hand and official seal.

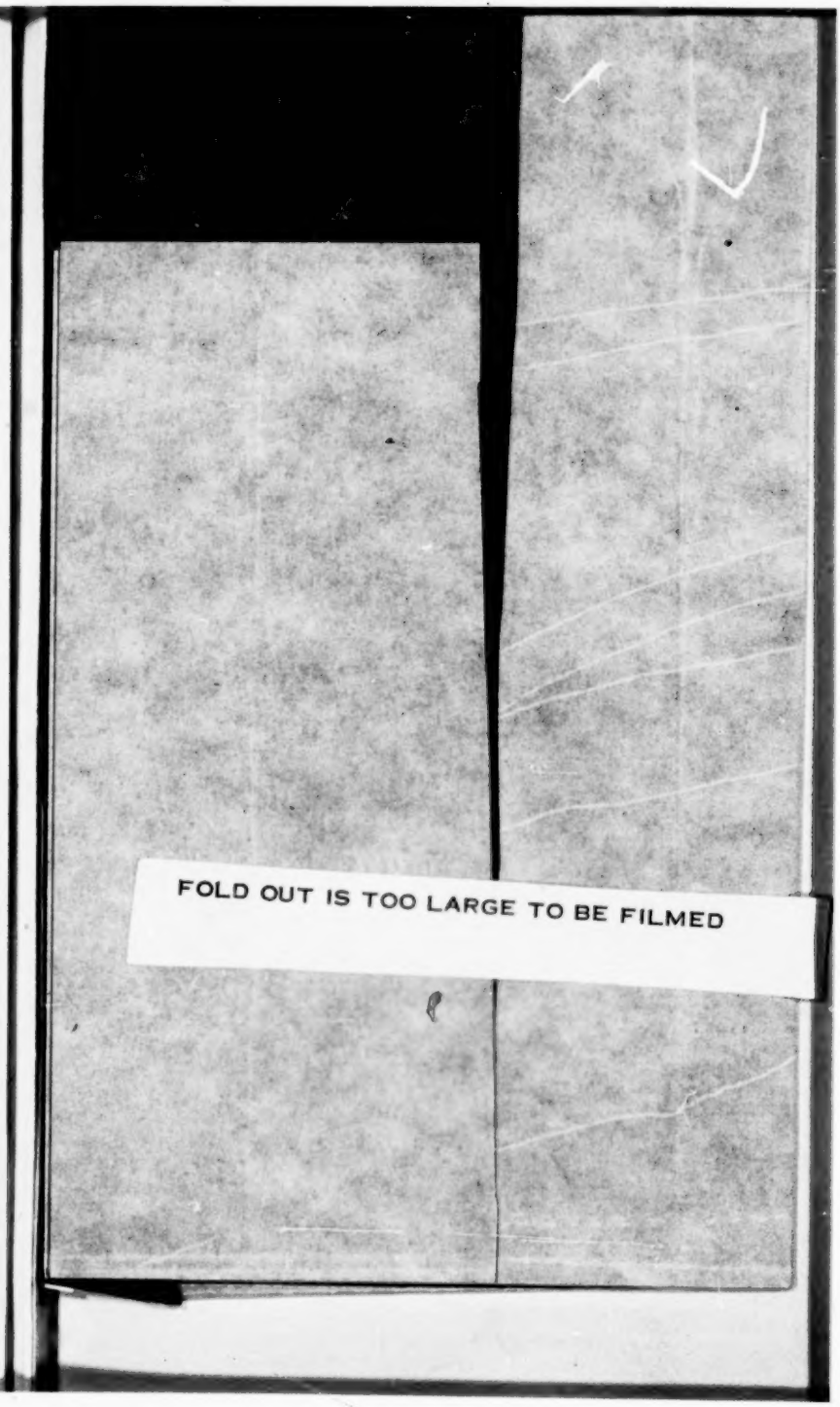
[SEAL] WILL C. NEWTON,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

STATE OF IOWA, *Complainant,*
vs.
STATE OF ILLINOIS, *Defendant.*
} Original.

On motion by the State of Illinois to vacate order approving report of Commissioners.

State and Southern District of Illinois ss.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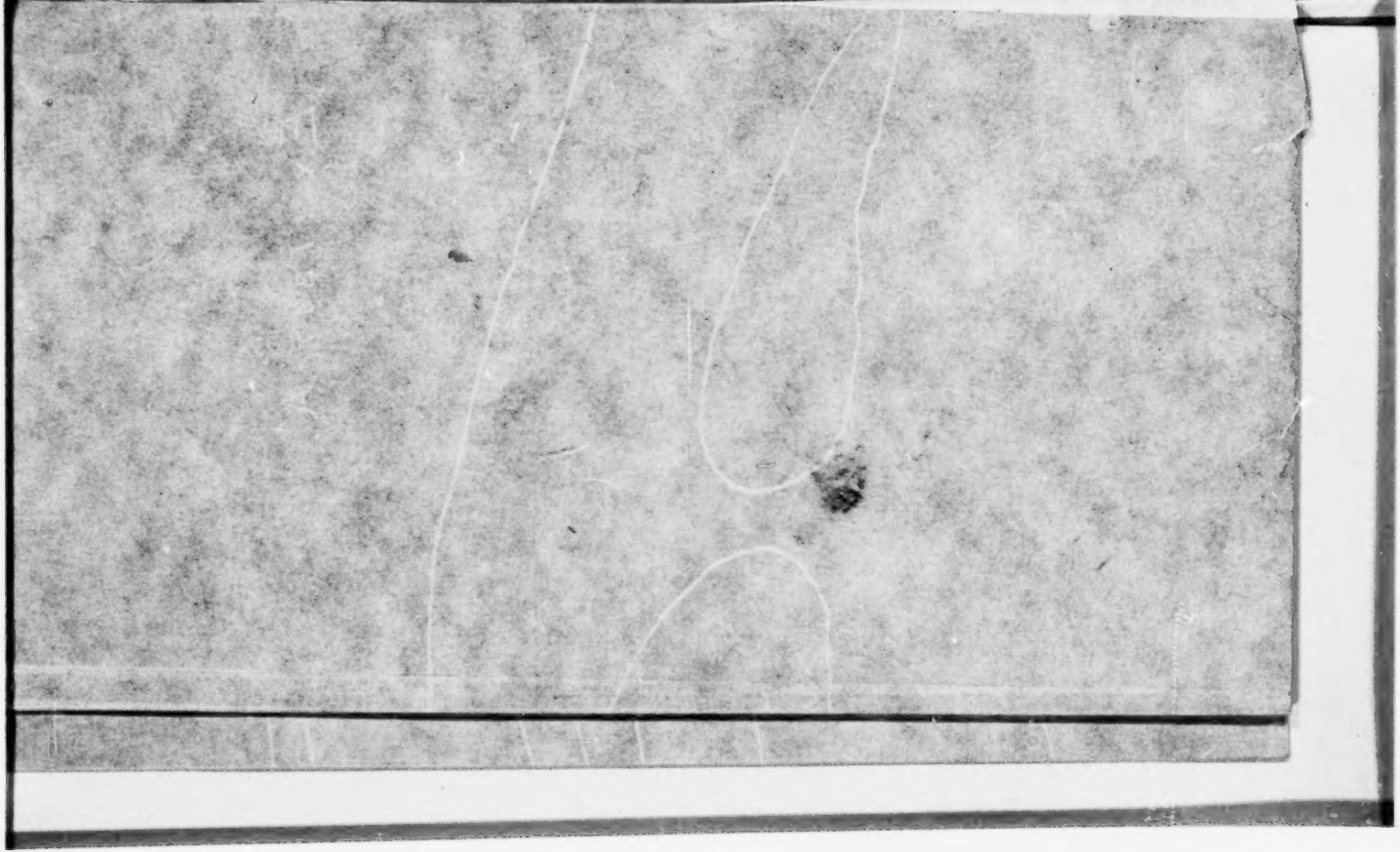

William R. Hamilton, of Carthage, Illinois, being duly sworn, says: that he has resided in Hancock County, Illinois for the last 58 years, except about one year he was in Oregon.

That from 1856 to 1858 he resided at Hamilton in said County of Hancock, and with deponent's father, Artois Hamilton and deponent's brother, John D. Hamilton, (both now deceased) he was connected with the business of warehousing, and to some extent in the lumber trade on the Mississippi River at Hamilton. That they had for considerable time, a Warehouse on the river front, just south of the dyke, at which the ferry boat landed. At which Warehouse steamboats engaged in the ordinary river traffic were in the habit of landing and receiving and delivering freights. That the said Warehouse was burned about the year 1859 or 1860.

That deponent during the time he resided at Hamilton, was often on the river between the lower chain of the Des Moines Rapids of said river and a point considerably below the location of the present Keokuk & Hamilton Bridge, and thinks he is well posted as to the depth of water, below said lower rapid (chain) for a mile or more. That in the opinion of deponent, prior to the construction, by the Ferry Co. of its road from the main shore at Hamilton across Island No. 2, the dam across the slough between Islands No. 2 and 4, and dyke extending into the river from the tow head at the upper end of Island No. 4, any steam or other boat that could pass over the said rapids, could readily pass *at any point* in said river between the west shores of Islands No. 2 and 4 and the Iowa shore.

That deponent frequently saw steamboats, of the

largest class navigating said river from St. Louis to Keokuk and to St. Paul at the Wabash depot at the west shore of Island No. 4, receiving and discharging freight. That the same class of steam boats also landed at said Warehouse herein before mentioned, to receive and land freights.

WM. R. HAMILTON.

Subscribed and sworn to before me, October 28th, 1893.

G. EDMUNDS,
Comr. Circuit Court, U. S. for S. District of Illinois.

IN THE SUPREME COURT OF THE UNITED STATES.

STATE OF IOWA, *Complainant*, *vs.* STATE OF ILLINOIS, *Defendant*. } No. 5 Original. Oct. Term, 1893.

State of Iowa, } ss.
Lee County, }

I, David Steeley, upon my oath, do state, that I am by profession a pilot of the Mississippi River, and have been for 29 years last past; that at present I am in the employ of the United States government as pilot on a government steamer engaged in river improvement between Keokuk, Iowa, and Ft. Madison, Iowa; that I have had many years experience in navigating the Mississippi River in the vicinity of Keokuk, Iowa, and Hamilton, Illinois, and am familiar with the location of the navigable channel of said river and the depth of water flowing in same; that prior to the construction of the Keokuk and Hamilton Bridge I was employed for seven years on the ferry line between Keokuk, Iowa, and Hamilton,

Illinois; I was pilot on three diffenrt boats with that line, the Gate City, Toledo and Keokuk, the last named was a boat 140 feet long and 40 feet beam with two boilers and a pair of large engines; she would carry forty-four loaded teams, besides passengers; we ran this boat at all stages of water until driven into winter quarters by ice; the ferry landing on the Illinois side at Island No. 4 was on the shore of Island No. 4 about 100 yards northerly from the east abutment of the Keokuk and Hamilton Bridge and about 700 feet east of the present location of that abutment. There was also a steamboat landing for the use of warehouses above the ferry landing about from 100 to 200 yards and loaded steamboats engaged in navigating the Mississippi River could land and did land at said depots for the purpose of receiving and discharging freight at all stages of water. The only obstruction to navigation between Keokuk, Iowa, and Hamilton, Illinois, were some iron chimneys of the steamer Louisiana, out from the Hamilton landing, that had been blown off the boat in a storm. These filled with sand and gravel and we used to avoid this obstruction, but otherwise the boats used to slant across from the Keokuk landing anywhere and landed on Island No. 4. At extreme low water no boats could load to more than a depth of 3½ feet and go up and down the river. In the extreme low water of 1864 very few boats ran at all; to my recollection no packets came into Keokuk at all during the lowest water of that year either from above or below. In 1891, during the low water, I was employed on a steamer owned in Keokuk, which was used to tow rafted lumber from Keokuk across to the Illinois shore at a point opposite the old ferry landing; there

was no difficulty in towing said lumber with said boat across to said point and I found five feet of water and more, all the way. The Keokuk landing was always shoal at low water; in 1891 boats hit the bed of the river at quite a distance from the shore.

D. C. STEELEY.

Subscribed and sworn to before me, by D. C. Steeley, this 28th day of October, A. D. 1893.

[SEAL] A. HOLLINGSWORTH,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

STATE OF IOWA, *Complainant*, *vs.* STATE OF ILLINOIS, *Defendant*. } No. 5 Original. Oct. Term, 1893.

State of Iowa, } ss.
Lee County, }

I, David Tipton, upon my oath do say, that I am a citizen of Rock Island, Illinois; that since 1854 I have been a pilot on the Mississippi River, running between St. Louis, Mo., and St. Paul, Minn., and have been engaged in the business of piloting every season since that date; that I am now in the employ of the United States government, being pilot of the United States steamboat "General Barnard," now engaged as a snag boat in the improvement of the Mississippi River between the mouth of the Missouri River and City of St. Paul, Minnesota. I am familiar with the bed and channel of the Mississippi River at the point where same is crossed by the Keokuk and Hamilton Bridge, and have been familiar with the bed of said river and

channel since 1854. That the City of Keokuk is at what is known as the head of navigation in extreme low water; before the construction of the bridge in extreme low water ; and before the construction of the Des Moines Rapids canal in extreme low water boats were unable to navigate the Mississippi River above the City of Keokuk; that prior to the location and construction of the Keokuk and Hamilton Bridge, about 1867, westerly the shore line of Island No. 4 was about 700 feet east of the easterly abutment of said bridge; that there was located upon said westerly shore of Island No. 4 a ferry wharf and landing and a steamboat warehouse and landing ; the ferry landing was used by large ferry boats which made daily trips from Keokuk, Iowa, to Hamilton, Illinois, such ferry boats running during all times of the navigable seasons; that the other steamboat landing and warehouse was used for the purpose of steamboats engaged in the ordinary navigation of the Mississippi River landing for the purpose of receiving and discharging freight; that during all times during navigable seasons of the Mississippi River, and except when navigation was prevented by reason of ice, all boats that could land at the City of Keokuk were able to cross the river and make the landing at Hamilton, Illinois, at the said warehouse and landing as then described on west bank of Island No. 4 ; that in my judgment there was a little more water and a better landing for steamboats on the Illinois shore at the point where the said wharf and warehouse is located, than there was on the Iowa shore; that the main channel of the Mississippi River before the construction of the Keokuk and Hamilton Bridge and before said channel was obstructed by artificlal means, was nav-

igable from the landing at Keokuk, Iowa, across to the landing on the west bank of Island No. 4 at Hamilton, Illinois. The bed of said channel is composed of solid rock, and a swift flowing current from the Rapids keeps same free from sand and other obstructions. That prior to the construction of the Keokuk and Hamilton Bridge the main channel of the Mississippi River from the west shore of Island No. 4 to the Iowa shore was navigable for boats engaged in commerce upon said river. That the ordinary boats engaged in navigating the Mississippi River can float in thirty inches of water and ordinary boats so used in navigation can pass over places in said river that have but thirty inches of water.

D. TIPTON.

Subscribed and sworn to before me, this 31st day of October, 1893.

[SEAL.] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,
vs.
THE STATE OF ILLINOIS.

State of Missouri, } ss.
St. Louis County. }

S. M. Ball, being by me first duly sworn, deposes and says, as follows:

I am a resident of the City of St. Louis, Missouri. Twenty four years of my life I followed the business of steamboat.nan, being in that time part owner of a

steamboat, and for a part of said time a licensed master and pilot on the Mississippi River. I am quite familiar with the Mississippi River between the the City of Keokuk, Iowa, and Hamilton, Illinois. As a pilot I took the steamer Enterprise into Hamilton Slough and know that before said slough was filled up on account of the building a railroad bridge across the same that both changed its course and narrowed it up, that the same was navigable at a fair stage of water. In November and December, A. D. 1881, during a time when the Keokuk and Hamilton Bridge was disabled, by reason of a collision with with the steamer War Eagle, I acted as master and pilot of on a very large and heavy ferry boat owned in St. Louis, and built for use there by the Wiggins Ferry Co., in transferring freight, teams, etc , at Keokuk, Iowa, crossing and re-crossing in regular trips just below said bridge. The boat drew six feet of water, and for part of the time landed at a point about 700 feet east of the east end of said bridge and along side the approach thereto. The rest of the time we landed against the east abutment of said bridge.

S. M. BALL.

Subscribed and sworn to before me, this 28th day of October, A. D. 1893.

[SEAL.] JAMES B. CLARK,
Notary Public.

My term expires March 16th, 1894.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,

vs.

THE STATE OF ILLINOIS.

State of Ohio, }
Hardin County. } ss.

Henry B. Whitney, being duly sworn, doth depose and say, as follows :

That for many years he was a licensed pilot and master of steamboats on the Mississippi River, and that during that time, to-wit: from 1879 to 1891, he was engaged at various times in piloting and managing vessels engaged in the improvement of said river, part of the time employed by the United States in piloting boats engaged in dredging and other work in the Des Moines Rapids Canal and the waters of the Mississippi river adjacent adjacent thereto, particularly at the lower entrance to said canal along the Iowa shore in the City of Keokuk, and that in dumping the material dredged from said canal and the entrance thereto he had occasion to pass through the draw of the Keokuk and Hamilton Bridge and cross the river immediately below said bridge more than 100 times, and that in crossing the river at all stages of the water he never found any obstructions nor any trouble in going anywhere necessary to dump said material in the sloughs on the Illinois shore or along the shores of the islands in Illinois. That he has crossed and re-crossed the the river repeatedly at a point about 400 feet east of the Iowa shore and about 150 yards below the above named bridge, with heavy tows and that he knows of no obstruction at that point nor anywhere near there

to the free navigation of the Mississippi River. That in the month of November, 1881, he was for a short time engaged as pilot and master upon a boat used to transfer material for repairing bridge, and that he landed a number of times at a point 700 feet east of the east end of the bridge, and that during the same time a very large and heavy ferry boat from St. Louis that drew from 5 to 7 feet of water made regular trips immediately below said bridge and landed at the same point.

H. B. WHITNEY.

Sworn to before me and subscribed in my presence, this 21st day of October, A. D. 1893.

[SEAL] WM. W. STEVENSON,
Notary Public, Hardin Co. Ohio.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,
vs.
THE STATE OF ILLINOIS,

State of Illinois, }
Hancock County. } ss.

Frank Meyers, being by me first duly sworn deposes and says, as follows:

I am a licensed pilot on the Mississippi River, residing at Warsaw, Illinois I have been engaged in the steamboat business since the year A D. 1861. In going up the Mississippi River previous to the building of the Keokuk and Hamilton Bridge at Keokuk, Iowa, we would keep our boats about the middle of the river, and after passing Keokuk would run

as close to the Iowa shore as possible in order to save distance, as the river runs almost a circular course there.

FRANK MEYERS.

Subscribed and sworn to before me, this 26th day of October, A. D. 1893.

[SEAL] HENRY J. M. LUEDDE,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,

vs.

THE STATE OF ILLINOIS.

State of Iowa, } ss.
Lee County. }

I, C. C. Carpenter, being first duly sworn, do depose and say, as follows:

I am a licensed pilot on the Mississippi River and reside at Lansing, Iowa. I have been licensed for the last 23 years. I also hold a master's license, and am in charge, at this date, of the tow boat Inverness and engaged in towing lumber in rafts down the Mississippi River. The stage of the water at Keokuk, Iowa, which is at the foot of the Des Moines Rapids in said river, as shown by the guages, is to-day at one foot and one half above extreme low water mark of 1864. At this stage of the river, boats nor rafts cannot be brought over the rapids, but are compelled to come down through the Des Moines Rapids canal.

For these reason lumber that is designed for points in Illinois opposite Keokuk, Iowa, is brought through the canal and down through the pivot span of the

Keokuk and Hamilton Bridge, to where there is good water and taken across the river below said bridge and landed on the Illinois shore, and upon this 23d day of October, 1893, I not only brought a raft out in the manner described above but pushed it across the river and up through the east span of said bridge finding but very little, if any difference, in the water in crossing the river in this way. The river bed above said bridge for a considerable distance is comparatively level, with a smooth rock bottom, except where here and there in a soft spot the rock has been worn into a hole. Along the Illinois shore, that is to say, the west banks of the Islands opposite Keokuk there is a sort of a "gut" where the water is deeper than along the Iowa shore.

C. C. CARPENTER.

Subscribed and sworn to before me, this 23d day of October, A. D. 1893.

[SEAL.] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,

vs.

THE STATE OF ILLINOIS.

State of Iowa, } ss.
Lee County, }

William Dobler, being by me first duly sworn, deposes and says, as follows:

I am a resident of Sumner, Washington, and am licensed as a pilot to run on the Mississippi River since 1876. At this time I am employed as a

pilot upon the tow boat Inverness, and engaged in bringing rafts of lumber down the Mississippi River. When the water is very low, as it is now neither boats nor rafts can be brought over the Des Moines Rapids of the river, which rapids end at Keokuk, Iowa. Everything is then brought through the Des Moines Rapids canal. On this 23d day of October, the above named boat, in tow of a raft, brought the same down through said canal, then on down through the draw of the Keokuk and Hamilton Bridge, a short distance below, said canal, to where there is good water, immediately below said bridge, and then pushed said raft across the river just below the bridge and up through the east span of said bridge, finding about the same stage of water clear across and just as good under the east span as the pivot span of the bridge.

WILLIAM DOBLER.

Subscribed and sworn to before me, this 23d day of October, A. D. 1893.

[SEAL.] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES:

STATE OF IOWA,
vs.
STATE OF ILLINOIS.

State of Iowa, } ss.
Lee County, }

W. H. Jones, being by me first duly sworn, deposes and says as follows:

I am a resident of Keokuk, Iowa; by profession a Civil Engineer and am now and for two years past

have been the City Engineer for said city, and have in my charge the maps, profiles, etc., pertaining to the original surveys of said city. On this, the 24th day of October, 1893, I took the necessary measurements to determine the shore line at Keokuk, Iowa, opposite the west end of the Keokuk and Hamilton Bridge. I have read the affidavit of H. S. Brown, made on the 19th day of September, 1893; made for use of the State of Illinois on the motion to set aside the order confirming the report of the Commissioners in fixing the boundary line between the States of Iowa and Illinois, in which he states that the deepest water was 250 feet from the Iowa shore line. And I find by careful measurements that at a point 250 feet from the Iowa shore line there is at this date with a stage of 1.4 feet above low water no water at all at that point and that it would be necessary to go at least 50 feet further to reach the west abutment of said bridge, and about 75 feet still further to reach the centre of the channel blasted out of the rock by the United States so as to form a channel from the pivot span of said bridge to the entrance to the Des Moines Rapids Canal.

I have also read the affidavit and examined the profile made by Thomas B. McMath on September 20th, 1893, in the same case as noted above, and on this 24th day of October, 1893, with the water at a stage of 1.4 feet above low water and 1 foot above the stage indicated upon the profile noted above, have taken soundings in the river at the following points to wit; at the point on the said profile noted as station 1400 and find that there is 7.5 feet of water over the bed of the river but only 2.5 feet on the old pier immediately under that point and on which the soundings noted on said profile must have been taken.

Going up the river from where the deepest water is indicated upon said profile I took soundings for 300 or 400 feet finding about 6.5 feet of water. At the point indicated upon said profile as "Commissioners mark" I found from 6′ to 6.5′ to the bed of the river.

Although the sand has formed a bar there that leaves but 4 to 5 feet above the sand. I noticed that east of this point and directly under said bridge the water was about the same, perhaps a few inches deeper: i. e. 6.5 to 6 to 7 feet over the bed. Below the pier right at the state line there is a large deposit of rock thrown in around said pier which caused the bar to form.

W. H. JONES.

Subscribed and sworn to before me, this 24th day of October, 1893.

[SEAL.] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

STATE OF IOWA,
vs.
STATE OF ILLINOIS,

State of Iowa, } ss.
Lee County. }

I, W. S. Sample, being duly sworn, do depose and say as follows:

I am a resident of the City of Keokuk, Iowa, and have lived in or near said city for more than 40 years. Previous to the year 1871 I was engaged in the ferrying business between Keokuk, Iowa, and Hamilton,

Illinois and was constantly crossing and recrossing the Mississippi River at or near the place now occupied by the Keokuk and Hamilton Bridge with a large and heavy ferry boat. Part of that time there was a warehouse known as the Hamilton Warehouse on the Illinois shore of the island opposite Keokuk and about 1500 feet above the east end of the above named bridge and from 500 to 700 feet east of the east end of said bridge, to which I have gone repeatedly for merchandise, etc., and to which I have seen a great many times, the steamboats plying the river land, it being one of the regular landings of the Mississippi River. That in later years and previous to the building of said bridge, the Wabash Railroad had a warehouse about 700 feet east of the east end of said bridge, to which steamers of ALL classes made regular trips. That leading out from this warehouse into the river immediately above the east approach to said bridge a pier was built so that the railroad tracks could be extended into the river to take off the heavy freight to or from the boats and that all of the heavy stone used in the basement story of the Capitol Building at Springfield, Illinois was quarried a few miles above this point in Illinois, and brought to this pier to be loaded into cars, etc That I have crossed and recrossed the Mississippi River both above and below the said bridge more than 500 times upon steamers, ferry boats, etc., and that I always found it navigable at any stage of water and that the same is navigable at the extreme low water mark of 1864 from a point 500 or 600 feet east of the east end of said bridge to a point 200 to 250 feet west of the west end of said bridge if the artificial obstructions are removed. That from his acquaintance with the Mississippi river and from a long experience and

observation he knows that there is nothing about 400 feet east of the Iowa shore and 150 yards below the Keokuk and Hamilton Bridge that is an obstruction to navigation or that has ever prevented boats of all classes from crossing or recrossing the river at that point or anywhere between there and the bridge above.

That he has repeatedly seen boats cross and recross the river both above and below said bridge since it was built, in towing lumber, willows and the fleets of the United States in taking dump boats from the Des Moines Rapids Canal. That for a long distance above said bridge, the river bed is one unbroken ledge of rock comparatively level, with an occasional pocket or hole where the rock was probably softer than at other places. That below said bridge the rock very soon disappears and much deeper water is found. That Keokuk is situated upon a point or promitory around which the river runs in almost a complete semi-circle and that boats in going up or down the river and not having to land at Hamilton, Illinois, would as a matter of economy both of time and of fuel keep in as close as possible to the Iowa shore on the inside of the circle, but that from my knowledge of the river that was not necessary except as noted above.

In witness whereof I have hereunto set my hand this 24th day of October, A. D., 1893.

W. S SAMPLE.

Subscribed and sworn to before me this 24th day of October, A. D., 1893.

[SEAL.] WM. J. SCHLOTTER.

Notary Public in and for Lee Co., Iowa.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,

vs.

THE STATE OF ILLINOIS.

State of Iowa, }
Lee County, } ss.

John C. Daniels, being by me first duly sworn, deposes and says, as follows:

My residence is Keokuk, Iowa, and my business that of a steamboatman, engaged in towing rafts of lumber and logs down the Mississippi River. I have been engaged in this business since 1867, and am the owner of two steamboats, which I use for the above purposes. Whenever there is a low stage of water neither boats nor rafts can navigate the Des Moines Rapids of the Mississippi River, but are brought through the Des Moines Rapids canal. I frequently sell or contract for the delivery of lumber at Hamilton, Illinois, opposite the City of Keokuk, Iowa, and whenever the stage of water prevents coming over the rapids with safety, I have brought the rafts down through the canal and taken them across the river just below the Keokuk and Hamilton Bridge and landed them against the west bank of the islands, either below the east end of said bridge or pushed them up through the east span of said bridge as far as possible for the smoke stacks of my boat, as the bridge is a low bridge, with its draw span on the Iowa side. In the summer of A. D. 1892, when the water was extremely low, I took some very long and heavy cribs of lumber across to the Illinois side with a boat that conld run under the bridge and on this occasion I ran up through the bridge in a quartering

direction and landed them above the east end of said bridge about 900 to 1200 feet and from 400 to 600 feet east of its end. I know that there has been good water for navigation for a long distance above said bridge in Illinois, and before artificial means had changed the condition it was as good as along the Iowa shore.

JOHN C. DANIELS.

Subscribed and sworn to before me, this 25th day of October, 1893.

[SEAL.] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,
vs.
THE STATE OF ILLINOIS.

State of Iowa, }
County of Lee, } ss.

I, John Smith, being first duly sworn, do depose and say, as follows:

I am a citizen of Iowa, and have resided in the City of Keokuk for the last 38 years. My business is that of a fisherman in the Mississippi River, and in following that business for about 18 years, I have become familiar with every part of the river between Keokuk, Iowa, and Hamilton, Illinois, as I have frequent occasions to pass and repass over every part of same in setting nets, anchors, &c., &c., at all stages of the water. For a considerable distance both above and below the Keokuk and Hamilton Bridge, the river bed is almost one unbroken bed of rock, ex-

cept where here and there a soft spot has been worn into a hole or pocket. The deepest water under said bridge being one of these holes, which is very narrow and disappears as you go directly up or down the river. Before said bridge was built the bed of the river washed off clean and and smooth from shore to shore, but since the building the bridge and the approach thereto, considerable filling has taken place and occasionally forms a sand bar for only a short time, usually above some of the piers to the bridge. I know there is no ledge of rock, nor any other obstruction to navigation about 400 feet east of the Iowa shore and 150 yards below said bridge, nor any where between that point and said bridge that would prevent the free navigation of said river between Island No. 4 in Illinois, and the main bank in Iowa. I have seen the packet steamboats that ply the river land at Island No. 4 near the old Wabash depot about 700 feet east of the east end of the said bridge a great many times before the bridge was built, and have seen them as many more times land at the old Hamilton warehouse about 1300 or 1400 feet above said bridge, and about 700 or 800 feet east of the east end of said bridge. I know there is good water all along the shore of the Island above said bridge and that boats go in there very frequently with lumber, or for willows from the island, and that at a very low stage of water.

JOHN SMITH.

Subscribed and sworn to before me, this 23d day of October, A. D. 1893.

[SEAL] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,

vs.

THE STATE OF ILLINOIS.

State of Iowa, }
Lee County. } ss.

Jacob Heinz, being by me first duly sworn, deposes and says, as follows:

Commencing with the year 1859 I was employed in various ways upon the steam boats that run upon the Mississippi River between St. Louis, Mo., and St. Paul, Minn., for many years, and for a considerable time was engaged on the ferry boats that ran between Keokuk, Iowa, and Hamilton, Illinois. I am very familiar with the landings in Illinois, opposite the City of Keokuk, and know that the largest steamers that came to Keokuk were in the habit of going to the old Hamilton warehouse about one-half mile above the east end of the Keokuk and Hamilton Bridge, and of going to the depot of the Wabash Railroad which was built in later years on or near the west bank of Island No. 4, or 600 to 800 feet east of the east end of said bridge, and that this was done whenever there was freight to load or unload, and at any stage of water that these boats could get to Keokuk from the south.

JACOB HEINZ.

Subscribed and sworn to before me, this 24th day of October, 1893.

[SEAL] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,

vs.

THE STATE OF ILLINOIS.

State of Iowa, } ss.
Lee County, }

Henry Conn, being first duly sworn, doth depose and say, as follows:

That he is a citizen of Keokuk, Iowa, and has resided there for years. That during the years 1868 to 1871 he was employed upon the ferry between Keokuk, Iowa, and Hamilton, Illinois, and became well acquainted with the Mississippi River between these two points. That previous to the building of the Keokuk and Hamilton Bridge there was a warehouse belonging to the Wabash Railroad Co., located about 650 to 750 feet east of the east end of the Keokuk and Hamilton Bridge, to which boats of all classes went, at all stages of water, to receive and discharge their loads. That afterwards a pier was built from this warehouse out into the river just above what is now the east approach to said bridge, and that boats landed alongside of this to take on and put off the heavy freight that was not taken into the warehouse. At this point I saw the heaviest kind of stone loaded into cars to be taken to Springfield, Illinois. I think I have crossed the river both above and below the Keokuk and Hamilton Bridge not less than 1000 times, and I never saw any obstruction nor heard of any about 400 feet east of the Iowa shore and about 150 yards below the bridge, nor between that point and the bridge, that would prevent the

free navigation of the river from bank to bank. Since the Des Moines Rapids Canal was built I have seen the tow boats with their tows come out of the canal and cross the river below the bridge in all sorts of ways and in all stages of the water. The bed of the river above said bridge is nearly level, with occasional holes, where a soft spot is found in the rock bottom, but perhaps 500 to 600 feet below the bridge the rock shelves off and the water grows deeper.

HENRY CONN.

Subscribed and sworn to before me, this 24th day of October, A. D. 1893.

[SEAL] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,
vs.
THE STATE OF ILLINOIS.

State of Iowa, } ss.
Lee County. }

Jacob Schlotter, being by me first duly sworn, deposes and says, as follows:

I reside at Keokuk, Iowa, and from the fall of 1858 to 1869 was engaged in various capacities upon the steamboats running on the upper Mississippi River from St, Louis, Mo., to Keokuk, Iowa.

The boats that I served on were the Warsaw, Lucy Bertram, Andy Johnson, &c., being the largest boats that ran above St. Louis. I am familiar with the location of where the Hamilton warehouse and afterwards where the Wabash Railroad depot stood

on the west banks of the Islands opposite Keokuk, and know that the boats I have named above, as well as others upon which I served went to these warehouses at any stage of water when we got to Keokuk.

JACOB SCHLOTTER.

Subscribed and sworn to before me, this 25th day of October, A. D. 1893.

[SEAL] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES

THE STATE OF IOWA,
vs.
THE STATE OF ILLINOIS.

State of Iowa, }
County of Lee. } ss.

I, Charles Bartlett, a citizen of Hamilton, Illinois, being duly sworn, do depose and say, as follows:

I am a civil engineer by profession, but for the last four years have been engaged in the lumber business in Hamilton, Illinois, and that all or nearly all the lumber bought for our business is brought down the Mississippi River in rafts. That at a good stage of water it is brought down Hamilton Slough, and landed on the main shore in Illinois, in the City of Hamilton.

That at other times, it is brought down through the Des Moines Rapids Canal, and then brought across the river and landed along the shores of the islands between said slough and the main arm of the

river. That in September, 1891, when the stage of water in the river was three to five inches below the low water mark of 1864—which is the government standard for reference— and when no boats could navigate the river above the Keokuk and Hamilton Bridge, except by going through the Des Moines Rapids Canal, I had rafts brought down through said canal and below said bridge and from there towed across the river and up through the east span of said bridge to where there was a convenient place for pulling said rafts, and loading the lumber on wagons to haul to my yards. That I found sufficient water immediately above said bridge along the west bank of the island, but that from 300 to 900 feet above said bridge the water was still deeper and better for my purposes. I have repeated this three or four times in low water, but not when it was quite so low as the time mentioned, but when that was the only way of getting the lumber over the Des Moines Rapids.

CHARLES BARTLETT.

Subscribed and sworn to before me, this 31st day of October, A. D. 1893.

[SEAL.] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

STATE OF IOWA, }
vs. } Original.
STATE OF ILLINOIS, }

State of Iowa, }
Lee County } ss.

H. R. Dickinson being by me first duly sworn doth depose and say as follows:

I am a citizen of Hamilton, Illinois, and have re-

sided there for the past 48 years. During all this time I have been familiar with the Mississippi River between Hamilton, Illinois and Keokuk, Iowa; part of the time I was engaged in the ferry business between these towns.

I know that steamboats often landed at the old Wabash Depot on Island No. 4, and received and discharged freight, as well as at a warehouse owned by Hamilton, about ¼ mile north east from said Wabash depot. Said Wabash Railroad had its depot on Island No. 4, about 700 feet east of the east end of the Keokuk and Hamilton Bridge, from which it received and delivered to steamboats freights for 10 or 12 years and until said bridge was built. From this warehouse a pier or dyke was built out into the river 600 or 700 feet and just above the east approach to said bridge so that heavy freights could be handled directly to and from the cars and boats, and from the south side of said pier was shipped the stone for the basement story of the Capitol at Springfield, Illinois, which were quarried a few miles up the river in Illinois, and brought here on boats for shipment. At present and for some years past I have been in the lumber business and buy most of my lumber in rafts and bring it down the river in that way. When there is a good stage of water I have it brought down over the rapids and delivered in Hamilton slough, and pull it on the main shore in Hamilton. This slough has been navigable in times past for quite large boats and some 38 years ago a packing house stood on its eastern shore to which boats came to receive and discharge freight. Since the Wabash Railroad bridge was built across it, the course was changed and the waterway made so narrow that it has since filled up a great deal.

Whenever the river has been too low to bring rafts over the rapids I had them brought down through the Des Moines Rapids Canal, and then taken below the bridge above named, and towed accross by steamer just below it to the east span of said bridge and brought up under that span a distance of from 100 to 1500 feet in the water along the west bank of the island above the bridge, and there I find water deep enough for any ordinary steamboat and for my purposes. On the 23d to 25th of October, 1893, with a stage of water from 1-3 to 1.5 feet above low water I was receiving lumber in this way.

I have crossed the river over 500 times above and below said bridge and know of no obstruction about 400 feet east of the Iowa shore, and about 150 yards below said bridge that would prevent the free navigation of said river from bank to bank, nor do I know of any obstruction between that point and the bridge that would interfere with any steamboat.

I have in very recent years seen the fleets of the United States Engineer Corps, that were engaged in dredging the Canal, cross or recross below said bridge, going to the sloughs on the Illinois side, or to the shore, or just below the bridge to dump their loads, and never knew nor heard of one having any trouble in going any where below said bridge. I know that a few years since one of the piers under said bridge, near where the state line has been marked was moved by the ice, and that the Bridge Company threw in a great lot of rock to hold it against further trouble.

I also know that some 350 feet west of this point the Bridge Company put in a wooden pier or crib and that the bottom part of it is still there. My opin-

ion is that from the time I settled in Hamilton, and until the Ferry Company constructed its road accross Islands Nos. 2 dammed the slough between Islands Nos. 2 and 4, and extended a dyke some 300 feet into the river, that any steamboat that could go up or down the rapids, could pass over any part of said river between the Iowa shore and the west banks of Islands Nos. 2 and 4, and have more water than on the rapids, The construction of said road, dam and dyke by the Ferry Company to a considerable extent changed the course of the current towards the west side of the river and as I believe caused deposits of sand and silth below said dyke where before the bottom of the river was a smooth flat rock, with an occasional hole worn by the ice and other agencies.

H R. DICKINSON.

Subscribed and sworn to before me this 1st day of November, A. D, 1893.

[SEAL.] WM. J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,
vs.
THE STATE OF ILLINOIS.

State of Missouri, } ss.
St. Louis County. }

Charles S. Whitney, being first duly sworn, deposes and says, as follows:

I reside in the City of St. Louis, Mo. For many years I was employed in contract work under the United States Engineer corps for the improvement of the Mississippi River, part of the time as an employee, but for seven years as a principal, and part owner of a fleet of steamboats, dredge boats, &c.,

adapted to that business. I am familiar with the Mississippi River between Keokuk, Iowa, and Hamilton, Illinois, and for 10 or 12 miles above where the Keokuk and Hamilton Bridge crosses said river, which part of the river is known as the Des Moines Rapids, and which were improved and made passable in low water by the building of the Des Moines Rapids Canal, on which improvement I was engaged for six years, and through my connection with this work and a study of the maps, profiles, &c., connected with the "rapids" and prepared by the U. S. Engineer Corps, and my experience in operating boats over these rapids, I became well acquainted with the river whole mentioned above. The bed of the river for a long distance above the said bridge is practically one unbroken ledge, nearly level, with the same stage of water from bank to bank, and with here and there a hole worn by the ice or other cause. Perhaps a mile above said bridge is a chain of rock, through which the U. S. blasted a channel many years ago, and before the building of the canal. This channel is a little nearer the Iowa than the Illinois shore, and in low water boats kept in as close as possible to the Iowa shore in order to save distance and to strike this blasted or made channel. From having gone innumerable times across the river between the above named towns I know there is nothing to prevent any ordinary boat that can reach Keokuk, from navigating said river from the west banks of the Islands in Illinois to the Iowa shore.

CHARLES S. WHITNEY.

Subscribed and sworn to before me, this 1st day of November, 1893. Witness my hand and notarial seal hereunto set and affixed.

My term expires January 27th, 1897.

[SEAL] H. Y. SHERWOOD,

Notary Public in and for the City of St. Louis, Mo.

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No. 4 Orig.
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Filed March 30, 1893.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1892.

No. 5. Original.

THE STATE OF IOWA

vs.

THE STATE OF ILLINOIS.

MOTION.

Now comes the said plaintiff, The State of Iowa, and moves the Court for an order confirming the report of the commissioners appointed by this Court to determine and mark the boundary line between said States at the nine bridges across the Mississippi river between said States so far as it relates to the boundary at the Keokuk and Hamilton bridge, at Keokuk, Iowa, upon which report has been made. Said motion is founded upon said report and the record in this case.

(Signed) J. H. COLE,
" WALTER I. HAYES,
Attorneys for Plaintiff.

Endorsed: Supreme Court U. S., October term, 1892. No. 5. Original. The State of Iowa, complainant, *vs.* The State of Illinois. Motion for confirmation of commissioners' report as to boundary line at Keokuk and Hamilton bridge. Filed March 30, 1893.

KEOKUK, IOWA, *March* 23, 1892.

To the Honorable the Supreme Court of the United States.

GENTLEMEN: Your commissioners appointed under a decision of your honorable body in the case of The State of Iowa *vs.* The State of Illinois, rendered January 3, 1893, to determine and mark the boundary line between the States of Iowa and Illinois at the nine bridges across the Mississippi river between these States have the honor to respectfully submit the following report, viz:

After qualifying under oath, as by law provided, and after most careful consideration of the decision of your honorable body in the case above mentioned, your commissioners proceeded, as directed by you, to survey and fix the boundary line between Iowa and Illinois on the Keokuk and Hamilton bridge, at Keokuk, Iowa.

Your commissioners find that the said boundary line is situated (1,041.65) ten hundred and forty-one and sixty-five one-hundredths feet easterly of the center of the draw-span, measured along the axis of the bridge and crossing the structure in a direction parallel to the piers of the bridge.

Your commissioners also respectfully submit the accompanying plat, showing their measurements along the bridge and to neighboring monuments, as a matter of further record.

(Signed) MONTGOMERY MEIGS,
JOHN R. CARPENTER,
ALBERT WEMPNER,
Commissioners.

Endorsed: Supreme Court U. S., October term, 1892. No. 5. Original. The State of Iowa, complainant, *vs.* The State of Illinois. Report of commissioners as to boundary line at Keokuk and Hamilton bridge and plat accompanying same. Filed March 30, 1893.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1905.

No. 2, Original.

STATE OF IOWA

v.

STATE OF ILLINOIS.

STIPULATION AS TO FINAL DECREE.

And now comes the State of Iowa, complainant in this cause, and also comes the State of Illinois, defendant in this cause, and severally and jointly move the court to vacate and set aside so much of the interlocutory order entered in this cause on the third day of January, A. D. 1893, as orders "that a commission be appointed to ascertain and designate at said places the boundary line between the two States, said commission consisting of three competent persons to be named by the court, upon suggestion of counsel, and be required to make a proper examination and to delineate on maps prepared for that purpose the true line as determined

by this court, and report the same to the court for its further action;" and also the interlocutory order entered in this cause on the seventh day of March, A. D. 1893; and also that part of the interlocutory order entered in this cause on the tenth day of April, A. D. 1893, which was not set aside and vacated by the interlocutory order entered in this cause on the fifteenth day of January, A. D. 1894; and that that part of the interlocutory order entered in this cause on the third day of January, A. D. 1893, whereby it was "ordered, adjudged, and decreed by this court that the boundary line between the State of Iowa and the State of Illinois is the middle of the main navigable channel of the Mississippi river at the places where the nine bridges mentioned in the pleadings cross said river," be declared the final order, judgment, and decree of this court in this cause.

CHAS. W. MULLAN,
Attorney General of Iowa.
W. H. STEAD,
Attorney General of Illinois.

[Endorsed:] In the Supreme Court of United States. Gen. No. —; docket —; term No. —; page —. State of Iowa *vs.* State of Illinois. Stipulation as to final decree. W. H. Stead, attorney general of Illinois; C. W. Mullan, attorney general of Iowa.

No. 11 Orig.

Brief of Stone & Davis for Compl'

Office Supreme Court U. S.
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CLERK.

Filed Oct. 10, 1892.

SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, 1891.

Original No. 11.

SET FOR HEARING OCTOBER TERM, 1892.

THE STATE OF IOWA, *Complainant,*

v.

THE STATE OF ILLINOIS, *Defendant.*

EQUITY.

On Bill, Answer and Replication, and Cross-Bill and Answer.

POINTS, BRIEF AND ARGUMENT FOR COMPLAINANT.

JOHN Y. STONE,
Counsel for Comp't and Attorney Gen. of Iowa.

JAMES C. DAVIS,
of Counsel.

REPUBLICAN STEAM PRINT, Carthage.

Supreme Court of the United States.

OCTOBER TERM, 1891.

Original No. 11.

SET FOR HEARING OCTOBER TERM, 1892.

THE STATE OF IOWA, *Complainant,*

v.

THE STATE OF ILLINOIS, *Defendant.*

EQUITY.

On Bill, Answer and Replication, and Cross-Bill and Answer.

POINTS, BRIEF AND ARGUMENT FOR COMPLAINANT.

JOHN Y. STONE,
Counsel for Comp't and Attorney Gen. of Iowa.

JAMES C. DAVIS,
of Counsel.

THE contest in this case is over the points or parts of the Mississippi River, over which the respective states, Iowa and Illinois, have jurisdiction for the purposes of taxation, as well as for all other purposes; hence involves the boundary lines in said river between said states.

On the part of Complainant it is contended that for purposes of taxation as well as for all other purposes, the boundary line is at the *middle of the main body of the river*, taking the middle line between the shores upon each side, without regard to the steamboat channel, or lowest and deepest part of the stream, and to determine the shores or water lines on each side, the measurements must be taken when the water is in its natural or ordinary stage, at a medium highth, not swollen by floods nor shrunk by drouth.

Angel on Watercourses, Secs. 10 and 101a.
Dunlieth & Dubuque Bridge Co. v. The County of Dubuque, 55 Iowa, 528.

The act of Congress of April 18th 1818, known as the Enabling Act, and defining the western boundary of Illinois; also the Constitution of Illinois, 1818, 1848 and 1870, all defining the western boundary of Illinois, as *down along the middle of that (the Mississippi) river to its confluence with the Ohio.*

On the part of the defendant it is claimed that the state of Illinois has jurisdiction for the purpose of taxation, and all other purposes, to the middle of the *steamboat channel* of said river regardless of where *that channel* may be, whether on the east or west bank of the river. *Bertschi v. The Keokuk & Hamilton Bridge Co. in the Appellate Court, 3d Dist. of Ill., and dictum of*

Judge Scott *in Buttenuth v. St. Louis Bridge Co., 123 Ill., 546, 548.*

It is a well known fact, that the *steamboat channel* (or channel of commerce, as the local authorities in Illinois sometimes designate it,) is more often close under one bank of the river, first one side and then the other, than at or near the middle of the main *arm* or *thread* of the stream.

For instance, at the location of the Dunlieth & Dubuque Bridge, though the main *arm* or *thread* of the stream is about 1800 ft. wide, the *steamboat channel* is immediately at the Illinois Shore, the center of such channel being only about 400 feet west of the shore; while at the location of the Keokuk & Hamilton Bridge, the reverse is the fact, the *steamboat channel* is immediately at the Iowa shore, the middle of such channel being only about 300 feet from that shore, while the main *arm* or *thread* of the river, always a solid body of water, except as it is obstructed by approaches to said bridge, is near 3,000 feet in width.

Practically, in taxing the Keokuk & Hamilton Bridge, the authorities in Iowa tax to the middle of the river, and the authorities in Illinois tax to the draw in said bridge, which, it is asserted by the Illinois officers, is the middle of the *steamboat channel*, and the line between said states. The effect of which is to tax over 900 feet of said bridge both in Iowa and Illinois.

It is clearly the right of the state of Iowa, to tax all property within the state, and is as clearly the duty of the state to so cause its boundaries to be marked and designated, that there can be no dispute between it and Illinois, as to jurisdiction, whereby its citizens are subjected to taxation in both states on the same property.

The pleadings in this cause present fully to the court the facts; hence no evidence is required.

On the part of Iowa the claim is that the line between said states, is the *middle of the main body or arm of said river*, and that its jurisdiction for all purposes extends to that line.

On the part of Illinois the claim is, that the line between said states, is the *middle of the steamboat channel*, and that its jurisdiction for all purposes extends to that line, regardless of where, in the main body or arm of said river may it be, or whether such steamboat channel is east or west of the middle of the main arm or body of the river.

This Court, only, can authoritatively determine that dispute, and it must do so, not upon evidence, but, upon the intention of congress in the passage of said enabling act of April 18th 1818, and what the people of Illinois understood it to mean when the Constitution of Illinois, of 1818 was adopted.

To the complainant it seems there ought to be no dispute but that the *middle of the main body or arm*

of the river was intended and understood as the west boundary of Illinois.

In support of the position of Complainant, reference is made to the following authorities:

Angel, in his work on Watercourses, Sec. 10, speaking of riparian rights, says:—"The soil of the bed itself and consequently the water, may be and most often is divided between opposite riparian owners; that is, the land on one side may be owned by one person and the land on the other side by another. When such is the case each proprietor owns to the middle, or what is called the *thread* of the river." In note 2—"In ascertaining the thread of the river, it will be proper to take the middle line between the shores upon each side, *without regard to the channel* or lowest and deepest part of the stream. And in ascertaining the shores or water lines on each side, to measure, it will be proper to find what those lines are when the water is in its *natural and ordinary stage*, at a medium height, neither swollen by freshets nor shrunk by drought." *Trustees v. Dickinson, 9 Cushing, 544, 552.*

Again, at Sec. 95, Angel says, using the language of Mr. Justice Story—"PRIMAFACIE, every proprietor on each bank of a river is entitled to the land covered with water, to the *middle thread of the stream.*"

WHAT IS THE MIDDLE OF A RIVER?

Anderson's Dictionary of Law, says:

MIDDLE.—See Thread.

THREAD.—The middle line of a stream or highway. See Filum, Riparian, Street.

FILUM.—A thread; a line,—the middle line of a stream or road. The imaginary line drawn through a stream or highway at which the titles of the opposite owners presumably meet.

FILUM AQUA.—The line of the water; water line.

MEDIUM FILUM AQUA.—The middle line of the water.

MEDIUM FILUM VIÆ.—The middle of the road.

Again, at Sec. 101 *a*, Angel says—"It is apparant that the rights of riparian proprietors on opposite banks of the stream do not depend upon and are not affected by the locality of the channel through or along which the larger or even the chief and principal part of water flows. Wherever this current may be, *the center line of the bed of the stream*, parallel to and equally distant from each shore, is the boundary of their lands."

The principles thus stated have been repeatedly held to be the rule of property in Illinois.

Middleton v. Prichard, 3 Scam. 510.
Braxon v. Bressler, 64 Ill., 490.
Canal Trustees v. Haven 5 Gilm, 557, 558.
The Chicago & Pacific R. R. Co. v. Stien 75 Ill., 44

Houch v. Yates, 82 Ill., 181.
Cobb v. Lavalle, 89 Ill., 334.
Washington Ice Co. v. Shortall, 101 Ill., 52.
Village of Brooklyn v. Smith, 104 Ill., 438, 439.
Piper v. Connelly, 108 Ill., 651.
McCartney v. C. & E. R. R. Co. 112 Ill., 634.
Buttenuth v. St. Louis Bridge Co., 123 Ill., 546, 549, 550, 551, 2, 3.
St. Louis Bridge Co. v. East St. Louis et al., 121, Ill., 238, 245.

This last was a bill filed in the St. Clair Circuit Court, to enjoin the collection of a *city tax*, against that part of the *St. Louis Bridge*, situated East of the centre of the middle span of the bridge, that being the middle of the *river*—and West of the West line of Front St. in East St. Louis.

Shope J. at p. 245, says, "The Mississippi is a navigable stream in fact, though not so at common law, and the jurisdiction of the State of Illinois, for all purposes not delegated to the general government, extends over the territory and waters of said river, TO THE MIDDLE THEREOF; and when property is found situated within such limits, or crimes and offences are committed within the legal boundaries of the State, whether such territory is covered with water or is dry land, the general laws of the State must be given effect."

In Morgan & Harrison v. Reading, 3 Sm. & Marshall, 366, a suit for rent or use and occupation, by riparian,

owner, against boatmen using the bank 119 days, Ch. J. Sharkey, p. 397, says *France* "was the first owner, by appropriation, of the Mississippi and all the territory of its tributaries. By treaty in 1763 * * France ceded to Great Britain all her territory east of the Mississippi river and north of the river Iberville, and the two powers fixed the boundary between them, by a line drawn along the middle of the river Mississippi." * * Great Britian continued to be the owner until Nov. 30th, 1782, when it ceeded to the U, S. all bounded on the west, north of 31 deg. north latitude, "*by a line drawn along the middle of the Mississippi River.*" Confirmed by treaty of 3d Sept. 1783. At p. 398: "Thus the U. S. succeeded to all the territory east of a line drawn along the middle of the Mississippi River.

In 1817 *Mississippi* was admitted with its west "*boundary* up the *Mississippi* River." * * "Congress adopted the more general mode of defining boundary on water courses, and omitted to designate the middle of the river as the limit, but as we shall endeavor to show, did not thereby change the original boundary."

At p. 399. "Thus we find the common law was adopted for the government of Mississippi." * * "*The middle of the river* being the dividing line, it follows that all grants, public as well as private * * must be construed by the rules of the common law." * * "The Mississippi territories by this rule extends to the *middle of the river.*" The rights of riparian owners extend to the MIDDLE OF THE RIVER.

In Dunlieth & Dubuque Bridge Co. v. The County of Dubuque, 55 Iowa, 558. This was an appeal from an assessment for taxes. P. 559. The bridge was 1,760 feet long, between abutments. From the Illinois shore to the middle of the *pivot-pier* is 430 ft. The pivot-pier is in the middle of the main channel followed by vessels in navigation of the river. The main body of water of the river (p. 570) flows in the channel between the abutments of the main bridge and is equal thereto in breadth.

6th. The Court finds the "eastern boundary of Iowa "is at the center of said main bridge, being the middle "of the main stream or channel of the Mississippi "river running thereunder, and distant 880 feet respect-"ively from the Iowa and Illinois shores or banks."

Court: The middle of the bed of the stream, regardless of the deepest channel, is the line between riparian owners, whether individuals or states.

Pratt v. Lawson et al., 2 Allen, 275, **284-5.**

Angel on Water Courses, § 10 and note 2, § 11 and note 3.

Jones v. Soulard, 24 Howard, *64-5*. The question was one of *accretions* in front of *St. Louis*, in Mississippi River. The charter of *St. L.* is "*thence by the Mississippi River to the place of begining.*"

This expression confers riparian rights, *to the middle thread of the stream.* The court say, 1st: "We are of "the opinion that the charter of St. Louis of 1809, ex-

"tends to the eastern boundary of the state of Missouri, "IN THE MIDDLE OF THE RIVER MISSISSIPPI."

The Sup. Court of Ill., in Buttenuth v. St. Louis Bridge Co., *supra*, at page 550 say: No reason is perceived why the principles here stated should not control the decision of the case being considered. As before remarked, it is manifest it was the intention of Congress, the Mississippi River should constitute a common boundry between the States of Illinois and Missouri, and had the words the "middle of the Mississippi River" and the "middle of the main channel" been omitted in both enabling acts of Congress, still the river itself would be the boundary and *each State would hold to the* MIDDLE OF THE STREAM."

The river at St. Louis bridge is like the river at the Keokuk & Hamilton bridge,—one open, unbroken sheet of water from the Missouri shore at St. Louis to the Illinois shore on Bloody Island,—and from the Iowa shore at Keokuk to the Illinois shore on Island No. 4. The distance at St. Louis being about 1500 feet and at Keokuk about 3000 feet.

Illinois authorities insist the middle of the river is at the middle of the channel ordinarily used by steamboats, less than 600 feet from the Iowa shore and over 2400 feet from the Illinois shore, (of that open sheet of water composing the main body or channel of the river) on Island No. 4. and about 900 feet west of the middle of the river.

Iowa is a prohibition state. Suppose the authorities at Hamilton grant a license to keep a dram shop immediately east of the east end of the draw and within 600 feet of the Iowa shore, what would be the result should the Iowa authorities demolish the dram shop? Could they be indicted and punished in Illinois?

If Illinois has the right to tax to the east end of the draw, the bridge to that point is in the City of Hamilton, and its authorities may lawfully license the dram shop, and if demolished under order of a court in Iowa, the sheriff or marshal obeying the order of the Iowa court could and should be indicted and punished in Illinois.

To my mind the simple question is, what did congress intend by the enabling act of 1818, and what did the people of Illinois understand was intended when adopting the constitutions of 1818, 1848 and 1870. Did they mean what they said *that the middle of the Mississippi River* was the western boundary of Illinois?

Prior to 1818, both Illinois, Iowa and Missouri were territory of the United States over which congress had supreme control.

Prior to that time, on May 18, 1796, and again May 3d, 1811, congress declared all navigable rivers within its territory public highways for the use of all the people, and they so remain. See 2476 and 5251 U. S. R. S. Neither Missouri, Iowa or Illinois have any right to interfere with the free navigation thereof as such highway. The use of the whole river from bank to bank is free as

a public highway to all the people of all the states. Not to the people of Illinois or Iowa alone, but to all. No question of right to use the stream and every part thereof as a highway could possibly arise between the states. Neither could authorize the construction of a bridge or other work that would interfere in the least with the use of the river as a highway without consent of congress. While that is true, the right to the soil under the water to the *middle of the river*, belongs in either state to the state or the riparian owner. And the right to tax any structure, placed in the river by proper authority, *to the middle of the river*, belongs to the *riparian state*.

The Supreme Court of the State of Iowa, by its solemn adjudication of the question properly before it, in the case of the Dunlieth & Dubuque Bridge Co. v. The County of Dubuque (supra) has given its construction as to the right of taxation. It holds that it has a right to tax to the *middle of the river*. And conceeds to Illinois the same right. In that case the steamboat channel was on the Illinois shore, and the authorities of Dubuque Co. had assumed to tax to the center of the steamboat channel, about ¾ the distance across the open bed of the river. The Supreme Court say that won't do. That the line between the states is the *middle of the river*. Since that decision Iowa has taxed the several bridges across the river to the middle of the river. This is the only case where the question was properly and squarely before the court, and directly passed upon, until the case of Bertschi v. the Keokuk & Hamilton Bridge Co., before cited as decided by the Appellate

Court, 3d Dist. Ill., in which that court holds the middle of the *steamboat channel* is the line between the states

The case in Iowa as a case in point and expressing the opinion of the State of Iowa on the question in this case, is entitled to great weight, notwithstanding gentlemen say the Supreme Court in the *Buttenuth* case did not approve it. The Supreme Court in the Buttenuth case was not called upon to either approve or disapprove. The question of our right to tax beyond the middle of the river was not before the court—was not in the case. What the court did decide was that Illinois had the right to tax to the *middle of the river*. Nothing more. Exactly what the Iowa court decided. And the Iowa court went further and distinctly say they cannot tax beyond the middle of the river.

11 Sub. C. R. *344-5-6*,

City of St. Louis v. Rutz, p. 344. Blatchford J says: "The law as stated by law writers, and in the adjudged cases *seem to be*, that when a river is declared to be the boundary between states, although it may change imperceptibly from natural causes, *the river, as it runs, continues to be the boundary*. But if the river should suddenly change its course, or desert the original channel, the rule of law is, THE BOUNDARY REMAINS IN THE MIDDLE OF THE DESERTED RIVER BED."

Missouri v. Kentucky, 11 Wallace, 395, the opinion of Davis, J., seems to put the whole subject at rest.

This was a case between STATES. The court say, p. 401. "It is unnecessary for the purposes of this suit, to consider whether, on general principles, the middle of the channel of a navigable river which divides coterminous states, is or not the true boundary between them, in the absence of express agreement to the contrary, *because the treaty between France, Spain and England in February, 1763, stipulated* THAT THE MIDDLE OF THE RIVER MISSISSIPPI should be the boundary between the British and the French territories on the continent of North America. And this line established by the only sovereign powers at the time interested in the subject, has remained ever since as they settled it."

It seems to us there can be but one ruling in this case, that is, that the line between the States of Iowa and Illinois, is the middle of the main body or arm of the Mississippi River, taken at its medium, not swollen by floods or shrunk by drought And at the point of the Keokuk and Hamilton bridge, is in the middle of the main body or arm of the river as it flows, and ever did flow, between the Iowa shore on the west and the west bank of Island No. 4. in Illinois, and at a distance of about 1521 feet from either. And at the Dunlieth & Dubuque bridge is where the Supreme Court of Iowa held it to be, in 55th Iowa.

If we are correct, the court will so determine and ap-

point a commission to establish and mark the state line at each of said nine bridges, admitted to exist.

Respectfully,

JOHN Y. STONE,

Attorney General of Iowa.

JAMES C. DAVIS,

Keokuk, Iowa, of Counsel.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1893.

STATE OF IOWA, *Complainant*,
vs.
STATE OF ILLINOIS, *Defendant*.
No. 5, Original.

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JOHN Y. STONE, Attorney General of the State of Iowa.
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I.

STATEMENT OF FACTS.

The facts connected with this controversy are stated in the opinion heretofore rendered by this Honorable Court in this cause, and reported in the thirteen Supreme Court Reporter, page 239. The controversy arises between the State of Iowa and the State of Illinois as to the boundary line between said States where same are separated by the Mississippi river at some nine points on said river where bridges cross said river connecting the said States of Iowa and Illinois.

This Court by opinion rendered January 3d, 1893, found that the boundary line which separates said States is "The middle of the main channel of the river," and by decree duly entered, provided "That the boundary line between the State of Iowa and the State of Illinois, is the middle of the main navigable channel of the Mississippi river," and the decree further provided, "That the boundary line should be ascertained and designated by a commission consisting of three competent persons to be named by the Court, upon suggestion of counsel, and be required to make the proper examination, and to delineate by maps prepared for that purpose the true line as determined by this court."

In pursuance of the order and decree of this Court, and by agreement entered into by the respective counsel for the said States of Iowa and Illinois, a commission composed of Montgomery Meigs, John R. Carpenter and Albert Wempner was appointed by order entered on the 7th day of March, 1893. Said Commissioners duly qualified, and on the 23d day of March, 1893, completed their report in writing, so far as the boundary line at the Keokuk and Hamilton bridge was concerned, attached thereto a map designating such line, and plainly marked on the structure of the Keokuk and Hamilton bridge said boundary line, and forwarded said report to be filed with the clerk of this Court. On the 26th day of March, 1893, the Attorney General of the State of Illinois, by telegram, authorized Mr. W. I. Hayes, a member of the bar of this Court, to appear on behalf of the State of Illinois and agree that a decree might be entered confirming the report of said commissioners. The report of said commissioners was duly filed on the 30th day of March, 1893, and on the 10th day of April, 1893, this Court, by decree duly entered, confirmed and approved the report of said commissioners as to the location of the boundary line between said States at the Keokuk and Hamilton bridge.

This order having been entered on the 10th day of April, 1893, was during the existence and continuance of the October term, 1892.

The decree of this Court confirming the report of the commissioners on the date last above mentioned remained unquestioned, and no proceedings of any kind or character were instituted to change, alter or vacate same until on the 11th day of October, 1893, when the State of Illinois filed the two motions in controversy. One of said motions asked for leave to file a motion to set aside the order confirming said decree. The other motion, supported by affidavits, asked that the report of the commissioners be set aside. This latter motion is of a summary character, is supported by affidavit, and seeks to set aside a final decree of this court rendered during the October term, 1892.

The grounds upon which the State of Illinois seeks to set aside said decree are :

1st. That the State of Illinois had no notice of the action of the Court in confirming the report of the commissioners.

2d. That the commissioners either wilfully disregarded the decision and decree of this Court, or totally misunderstood same.

The State of Iowa on its part, contends :

1st. That the decree of this Court confirming the report of the commissioners, having been entered during the existence and continuance of the October term, 1892, of this Court, said decree being final, and no proceedings having been instituted to set aside, change or modify said decree during the term which same was rendered, this Court has no jurisdiction in this proceeding to grant the relief asked on behalf of the State of Illinois.

2d. The State of Iowa contends that the motion to con-

firm the report of the commissioners, and the decree of this Court entered in accordance with said motion, was upon full notice to the State of Illinois, and the order and decree of this Court confirming the report of the commissioners was made at the request of, and with the consent of, the State of Illinois, through its Attorney General.

3d. That upon the merits of the controversy it clearly appears that the commissioners followed the opinion of this Court, understood same, and located the boundary line as between said State of Iowa and said State of Illinois, in strict accordance with said opinion.

We desire to present to the Court the reasons why we believe the report of the commissioners should be sustained, and the motion of the State of Illinois should be overruled upon each of the foregoing propositions.

II.

THIS COURT HAS NO JURISDICTION IN THIS PROCEEDING TO GRANT THE RELIEF ASKED BY THE STATE OF ILLINOIS.

The proceeding instituted by the State of Illinois to set aside the decree of this court confirming the report of the commissioners, and permanently establishing the boundary line as between the State of Iowa and the State of Illinois, is not an original action instituted by filing a complaint, and based upon the ground of fraud, but is a summary motion supported by affidavits.

We contend that the decree entered in this cause confirming the report of the commissioners was in its nature a final judgment; that if it so be that said decree was final in its character, this court has no power to change, altar or modify same after the final adjournment of the court at the term at which said judgment or decree was entered.

The court will remember that in this proceeding there are nine bridges crossing the Mississippi river between

the States of Iowa and Illinois. That the original decree contemplated the establishing of a boundary line between said states at each of said bridges. That the decree of April 10th, 1893, modified the original decree to the extent that the commissioners having established the bounday line at the point of the Keokuk and Hamilton bridge said line so located, was confirmed, and the commissioners were ordered to proceed with convenient speed to measure and locate the boundary line at the other points contemplated in said proceeding.

At the date of this order the commissioners had located and marked the boundary line as between said states on the Keokuk and Hamilton bridge. So far as this particular bridge was concerned after their report was confirmed they had no further duties to perform. This report having been duly filed with the clerk was, with the consent of the interested parties, duly confirmed by judgment of this court.

We therefore submit, that so far as the controversy concerning the boundary line at the Keokuk and Hamilton bridge is concerned, it was definitely and finally determined by the report of said commissioners. There were no further proceedings to be had by this court with reference to the boundary line at this point. There was nothing further to be done by the commissioners in pursuence of the order of this court. The boundary line as indicated by them was plainly marked upon the bridge, a map indicating the boundary line accompanied the report of the commissioners, and by filing same became a part of the records of this court. There was therefore, a final, definite, and complete determination of said boundary line at the said Keokuk and Hamilton bridge.

We contend that this finding and decree was final, and of such a character that same could not be changed, modified or set aside upon motion, unless the motion was filed

or determined during the term of court at which said judgment was rendered.

This court in case of Bevy vs. Russell, 19 How. 285, in an opinion by Mr. Justice Wayne, defines e final decree as follows :

"When a decree finally decides and disposes of the whole merits of the case and reserves no further question or direction for the future judgment of the court so that it will not be necessary to bring the case again before the couat for its final decision, it is a final decree."

We submit that so far as the boundry line between the State of Iowa and the State of Illinois is concerned, the judgment confirming the finding of the commissioners finally decides and disposes of the whole merits of the case as to that particular location and that it was not necessary to bring the said cause upon this particular point, again before this court for final decision.

In the recent case of Central Trust Co. vs. Grant Locomotive Works, 10 Sup. Ct. Rep. 741, 135 U. S. 207, this court, in an opinion delivered by Chief Justice Fuller, collated a number of authorities in determining what were final judgments and decrees. In this particular case in a foreclosure proceeding, the ownership and value of certain locomotives, was determined upon a petition of intervention. This court held such determination to be a final decree and in thc course of the opinion it was said :

"If these orders were final decrees, the court could not vacate them of its own motion after the close of the October term, 1883. McMicken vs. Perin, 18 How. 507-511. We think they were final. They determined the ownership of the locomotives, and the right to their possession; that they were essential to the operation of the roads by the receiver, and should be purchased by him; that certain designated amounts should be paid for the rentals and the

purchase price, which amounts were made a charge upon the earnings, income and property of the T. C. & St. L. R R. Co. * * * They were therefore final in their nature, and made upon matters distinct from the general subject of litigation—the foreclosure of the mortgages. In Trustees vs. Greenough, 105 U. S. 527, an appeal from an order for the allowance of costs and expenses to a complainant, suing on behalf of a trust fund, was sustained. In Hinckley vs. Railroad Co., 94 U. S., 467, a receiver was allowed to appeal from a decree against him to pay a sum of money in the cause in which he was appointed. In Williams vs. Morgan, 111 U. S,' 684, a decree in a foreclosure suit, fixing the compensation to be paid to the trustees under a mortgage from the fund realized from the sale, was held to be a final decree as to that matter. And in Fosdick vs. Schall, 99 U. S.. 235, a decree upon an intervening petition in respect to certain cars used by a railroad company under a contract with the manufacturer was so treated. There was a fund in court in that case, but in principle the orders here are the same. And see In re Farmers' Loan & Trust Co., 129 U. S., 206-13. "

It will be seen that in the above entitled cause certain *orders* made in connection with the ownership of some locomotives were held to be final decrees, and the reason of the opinion seems to be that said orders, so far as said locomotives were concerned, were final, and the court by said orders disposed of the particular property in that controvery.

So we say in the case at bar, that the order of this court confirming the report of the commissioners as to the location of the boundary line between Keokuk, Iowa, and Hamilton, Illinois, was finally disposed of and no other proceedings on the part of the court, or of the commissioners, was necessary to fully and completely determine said boundary line at said point.

It seems to be well established, not only by the decisions of this court, but as a general proposition, that after the final adjournment of a court at the close of any specific term the jurisdiction of the court over controversies that have been finally disposed of by final judgment or decree duly entered, ceases and determines, and there is no authority vested in the courts to change, alter or modify their judgments or decrees except upon bill in equity stating sufficient cause to grant relief upon the ground of fraud.

In case of Bronson vs. Schulten, 104 U. S., 411, Mr. Justice Miller, in delivering the opinion of the court, announces the following proposition:

"Does the power of the court over its own judgment, exercised in a summary manner on motion, after the term at which it was rendered, extend beyond this?

In this country all courts have terms and vacations. The time of the commencement of every term, if there be half a dozen a year, is fixed by statute, and the end of it by the final adjournment of the court for that term. This is the case with regard to all the courts of the United States, and if there be exceptions in the state courts, they are unimportant. It is a general rule of the law that all judgments, decrees or other orders of the courts, however conclusive in their character, are under the control of the court which pronounces them during the term at which they are rendered or entered of record, and they may then be set aside, vacated, modified or annulled by that court.

But it is a rule equally well established, that after the term has ended all final judgments and decrees of the court pass beyond its control, unless steps be taken during that term, by motion or otherwise, to set aside, modify or correct them, and if errors exist, they can only be corrected by such proceeding by a writ of er-

ror or appeal as may be allowed in a court, which, by law, can review the decision. *So strongly has this principle been upheld by this court, that while realizing that there is no court which can review its decision. it has invariably refused all applications for rehearing made after the adjournment of the court for the term at which the judgment was rendered. And this is placed upon the ground that the case has passed beyond the control of the court.*"

In support of the foregoing the following authorities are cited:

Brooks vs. R. R. Co., 102 U. S , 107.

Public Schools vs. Walker, 9 Wall , 603.

Brown vs. Aspden, 14 How., 25.

Cameron vs, McRoberts, 3 Wheat, 591.

Sibbald vs. U. S,, 12 Pet., 488.

U. S. vs. The Big Glamorgan, 2 Curt., C. C , 236.

Bradford vs. Patterson, 1 A. K., Marsh, (Ky.,) 464.

Ballard vs. Davis, 3 J. J., Marsh. (Ky.,) 656.

In case of Tyler vs. Magwire, 17 Wall., 283, this court in an opinion by Mr. Justice Clifford, said:

"Rehearings are never granted where a final decree has been entered and the mandate sent down, unless the application is made at the same term, except in cases of fraud. Appellate power is exercised over the proceedings of subordinate courts, and not over the judgments or decrees of the appellate court, and the express decision of this court in several cases is that 'The court has no power to review its decisions, whether in a case at law or in equity, and that a final decree in equity is as conclusive as a judgment at law,' which is all that need be said upon the subject."

We therefore respectfully submit that the order and decree confirming the report of the commissioners was final in its character; that no proceedings were instituted during the term in which said order was made, and that

at this time in this proceeding, this court has no jurisdiction to grant the relief asked by the state of Illinois.

III.

THE ORDER COMPLAINED OF WAS ENTERED UPON NOTICE AND BY AGREEMENT ON THE PART OF THE STATE OF ILLINOIS.

It appears from the affidavit of Mr. Walter I. Hayes, a member of the bar of this court, that in asking for the confirmation of the report of the commissioners, he did so at the joint request of the state of Iowa and the state of Illinois. At the time the motion asking for a confirmation of the report of the commissioners was filed—the record of this court, as made in the order granting permission to file said motion under date March 30, 1893, recites that Mr. Walter I. Hayes appeared in "behalf of counsel," clearly indicating that his appearance was in behalf of counsel for both parties.

It is significant that counsel on behalf of the state of Illinois have filed no paper which indicates that the confirmation was made without notice to them. The Honorable Attorney General of the state of Illinois does not file an affidavit in which he undertakes to say that he had no notice or knowledge of the filing of the report, or that a motion to confirm said report would be presented to this court.

On the contrary it expressly appears that a telegram bearing the signature of M. T. Malony, Attorney General for the state of Illinois, was directed to, and received by, Mr, Hayes, which telegram, in express and concise terms, authorizes and directs Mr, Hayes to appear in behalf of the state of Illinois and consent to a confirmation of the report of the commissioners. The language of the telegram is not ambiguous and is subject to but one construction, and is as follows:

"You are authorized to appear in Supreme Court of United States in case of Iowa vs. Illinois, and consent to the confirmation of the report of the commissioners as to line at Keokuk and Hamilton bridge."

The report bears date March 23rd, 1893. At that date there had been plainly marked upon the Keokuk and Hamilton bridge the boundary line. Subsequent to the sending of this telegram, the report was filed. In pursuance of the telegram and the authority therein contained, Mr. Hayes on behalf of the state of Iowa moved for a confirmation of the report, and under the authority of the above telegram consented for the state of Illinois to the confirmation of same, and on the 10th day of April, 1893, an order and decree of this court was made confirming the report of said commissioners.

It appears by the affidavit of Mr. George Edmunds, on behalf of the state of Iowa, that he was in the city of Springfield, Illinois, on the first or third day of April, 1893, eight days prior to the order confirming said report; that at said time and place the fact that the report had been filed was indicated by Mr. Edmunds to the Attorney General of the state of Illinois.

We can conceive of no legal or equitable principle which would relieve the state of Illinois from the action of its accredited agent.

The decrees and judgments of courts cannot be set aside for mere acts of negligence or oversight on the part of the parties to a controversy, and we believe, that as the merits of this controversy will show, the Attorney General of the state of Illinois was fully justified in agreeing to a confirmation of said report, and had it not been for mere local feeling which has become unduly excited over the amount of property to be taxed by the respective municipalities in Iowa and Illinois, the action of the Attorney General of Illinois in consenting to the confirmation of said report would have remained unquestioned.

In any event counsel having consented to the order of confirmation, the decree of this court having been entered in pursuance of said consent, we submit that the state of Illlnois is without redress upon this proposition.

IV.

MERITS OF THE COVTROVERSY.

We desire to submit to the court a few suggestions as to the merits of this controversy.

The opinion heretofore rendered by this court in this cause in clear, concise and unambiguous language defines the boundary line as between the state of Iowa and state of Illinois. After an examination of the leading authorities upon international law, this court says:

"The true line in navigable rivers between the states of the Union which separates the jurisdiction of one from the other, is the middle of the main channel of the river. Thus the jurisdiction of each state extends to the thread of the stream, that is, to the mid-channel, and if there be several channels, to the middle of the principle one, or rather the one usually followed."

And in the course of the decree it was ordered: "That the boundary line between the state of Iowa and state of Illinois is the middle of the main navigable channel of the Mississippi river."

In is a furthor part of the opinion it was determined: "That the line between the territory now comprising the state of Iowa and the state of Illinois was defined in the treaty between England, France and Spain in 1763 as the middle oftne "River Mississippi." That by treaty of Paris between Great Britian and the United States of date 1783, the boundary line remained the same as was fixed by the treaty of 1763, to-wit: The middle of the "River Mississippi." That by act of congress of date April 18, 1818, known as the "Act Enabling the People of Illinois to

Form a State Constitution," the boundary line was described as the middle of the Mississippi river"

We therefore contend that the boundary line as between the state of Illinois and the state of Iowa is not to be determined by the condition of the bed of the Mississippi river at the present time, especially, as within the memory of many living witnesses, substantial changes have been made in the bed of said river by artifical means as the result of the construction of the Des Moines Rapids canal, the Keokuk and Hamilton bridge and extended approaches to said bridge built from the original Iowa shore and Illinois shore, but that said boundry line remains as same was fixed either in the treaty of 1763, 1783 or by act of congress of date 1818. We do not understand that the court has laid down any new principles in this case, or reversed its former opinions, as, when a boundary line of this character is fixed.

In the case of Missouri vs. Kentucky, 11 Wall. 401, this court through Mr. Justice Davis, had occasion to determine when the boundary line of a state was fixed, and in the course of that opinion says :

"It is unnecessary, for the purpose of this suit, to consider whether, on general principles, the middle of the channel of the navigable river which divides co-terminous states, is not the true boundary between them, in the absence of express agreement to the contrary, because the treaty between France, Spain, and England, in February, 1763, stipulated that the middle of the river Mississippi should be the boundary between the British and French territories on the continent of North America. *And this line, established by the only sovereign powers at the time interested in the subject, has remained ever since as they settled it.* It was recognized by the treaty of peace with Great Britain of 1783, and by different treaties since then, the last o.

which resulted in the acquisition of the Territory of Louisiana (embracing the country west of the Mississippi) by the United States in 1803. The boundaries of Missouri, when she was admitted into the Union as a state in 1820, were fixed on this basis, as were those of Arkansas in 1836. And Kentucky succeeded, in 1792, to the ancient right and possession of Virginia, which extended, by virtue of of these treaties, to the middle of the bed of the Mississippi river. It follows, therefore, that if Wolf Island, in 1763, or in 1820, or at any intermediate period between these dates, was east of this line, the jurisdiction of Kentucky rightfully attached to it. *If the river has subsequently turned its course, and now runs east of the island, the status of the parties to this controversy is not altered by it*, for the channel which the river abandoned remains, as before, the boundary between the states, and the island does not, in consequence of this action of the water, change its owner."

In the recent case of State of Nebraska vs. State of Iowa, reported in 145 U. S. 519, 12 S. C. R. 396, this court had occasion to announce certain rules concerning the boundary line as between states when same is marked by a navigable river, and while the contention in that case was as to the effect of a gradual accretion or degradation of the banks of the river, yet the court announced certain rules that are applicable to the case at bar. It was said by this court through Mr. Justice Brewer :

"It is equally well settled that where a stream, which is a boundary, *from any cause* suddenly abandons its old and seeks a new bed, *such change of channel works no change of boundary; and that the boundary remains as it was, in the center of the old channel, although no water may be flowing therein.*" This sudden and rapid change of channel is termed in the law, "avulsion." In Gould, Waters, Sec. 159, it is said : "But if the change is violent and visible, *and arises*

from a known cause, such as a freshet, or a cut through which a new channel is formed, the original thread of the stream continues to mark the limits of the two states." See cases cited.

In the case at bar the change in the bed and channel of the Mississippi river has been from purely artificial causes. The changes made in the banks of the river are clearly indicated by the dykes and fills constructed in the various bridge and canal improvements made in the vicinity of the line in controversy.

The condition of the bed of the Mississippi river at the point crossed by the Keokuk and Hamilton bridge seems to be of a permanent and unchanged character. The affidavit and report of the government engineers. Meigs and Carpenter, (Complainant's record – 4—) a copy of which was furnished by said commissioners to the clerk of this court and the Attorney Generals of the states of Iowa and Illinois, describes the bed of the Mississippi river as of solid rock; that the current coming from the Rapids is of such a character as to keep said bed free and clear from accumulations, and with the exception that there may be occasionally soft places in the rock in which there have been worn depressions by the action of the water and the ice, the bed of the Mississippi river at this point has undoubtedly remained in substantially the condition that it now is for time immemorial.

It appears that before the construction of the Keokuk and Hamilton bridge the Illinois shore was 700 feet east of the present easterly abutment of the bridge; that there was located upon said shore railroad depots and steamboat landings; that large ferry boats and other boats engaged in the ordinary commerce of said river landed at said Illinois landing, receiving and discharging freight, and that the river between the shore at Keokuk, Iowa, and Hamilton, Illinois, was navigable at all seasons of navigation.

The test of the boundary line as indicated by this court seems to be navigability, and this main arm of the Mississippi river west of the shore of island No. 4, was, prior to the artificial obstructions placed in same, navigable, and navigated, from shore to shore.

The plat presented by the state of Illinois, as prepared by Engineer McMath, can aid but little in this controversy. It appears from the statement of the commissioners, (complainant's record, p. 13,) and other despositions, that the deep water indicated on said map at station 1650 is a pocket in the bed of the river which fades into shallows north and south of said depression. That the shallow water at station 1400 is occasioned by the soundings having been taken upon an old crib left in the river, and the shallow water at station 950 is occasioned by soundings having been taken upon rock thrown in the river to support a pier of the bridge, while the soundings taken at stations 2050, 2100, 2150, (west end,) went to the bottom of the channel, excavated by the United States since the bridge was built. With these exceptions there would seem to be a depth in the bed of the river along the entire distance between the east and west abutment of said bridge of considerably over three feet. and when it is borne in mind that these soundings were made at a time the river was exceptionally low and was only four-tenths of a foot above low water mark; when it is further considered that boats which navigate the Mississippi river in a low stage of water can run over thirty inches, and most, if not all of them, can run in three feet of water, it will be seen that the plat of Engineer McMath, with the exception of the artificial obstructions above indicated, discloses that the said river is navigable from abutment to abutment.

If the court on the other hand will examine the plat attached to the affidavit of O. S. Willey, who is now in

the employ of the United States government in the office at Keokuk, Iowa, it will be demonstrated that the bed of the river, as shown by said plat and survey made prior to the construction of the Keokuk and Hamilton bridge, that at all points between the east and west abutment of said bridge at extreme low water there is an excess of three feet of water in the bed of said river. That the medium stage of water is six feet above low water; that during the medium stage of water there is no point beneath the Keokuk and Hamilton bridge where there is not nine feet of water. This certainly would indicate that the main channel of the Mississippi river, the main arm of the river between Keokuk, Iowa, and Hamilton, Illinois, is according to the great weight of the affidavits presented by the state of Iowa, and is, but for artificial obstructions, navigable from abutment to abutment.

We do not desire to go into the details of the affidavits at great length, but we call the attention of the court to the character of the men who compose the commission which located the boundary line. Two of the commissioners are now in the employ of the United States government. Their employment has caused them to be peculiarly qualified to have a knowledge as to the bed of the Mississippi river where crossed by the Keokuk and Hamilton bridge. Major Meigs, an engineer of more than ordinary prominence, and a man prominent in the improvement of the Mississippi river, who is assistant in charge ot the improvement of the Mississippi river from Quincy, Illinois, to Keithsburg, Illinois, a distance *100* miles, was as well qualified as any man in the United States to perform the duties of such commissioner.

Mr. John R. Carpenter, also in the government employ, had the same familiarity with the subject as his colleague, Major Meigs, while Captain Wempner, a pilot of long standing, was peculiarly adapted, by occupation and

experience, to assist in the duties the commissioners were to perform. It was by reason of the high character and standing of the commissioners that the representatives of the state of Illinois and state of Iowa consented to their appointment, and we submit that their detailed statement should have more than ordinary weight with the court in determining whether or not the commissioners properly performed their duties

The motion on behalf of the state of Illinois is supported by the affidavits of but five persons who claim any familiarity with the bed and channel of the Mississippi river. An examination of each of those affidavits should convince the court that, in the first place, affiants do not agree as to the location of the channel, and in the second place, they are of such a vague and indefinite character that a boundary line of a state could hardly be determined upon the statements contained in their affidavits.

For instance, the plat as made by Engineer McMath would indicate a channel from 400 to 600 feet wide.

H. S. Brown, id his affidavit says: "The deepest water is 250 feet from the Iowa shore."

Sobert Farris in his affidavit says; "The west line of the channel was where the pivot pier of the bridge now stands and extends 400 feet east from that point."

Owens makes the same statement in his affidavit. Wagoner makes the pivot pier the west bank of the channel and extends it 300 feet east.

McMath's profile shows the deep water as between 400 feet east of the pivot pier and deeper 250 feet east of that point than it is 250 feet west, thus fixing the deep water channel east of the point fixed by the pilots.

On this profile attention is called to the fact that there is deeper water right west of the commissioners' mark than at the pivot pier, which is given by some of the pilots

as being the west bank of the channel. None of the pilots in their affidavits explain the navigability of the river with reference to the ferry-boat landing and warehouses located upon the Illinois shore prior to the construction of the Keokuk and Hamilton bridge.

Captain Wempner, whose affidavit of 1891 is attached to the petition on behalf of the state of Illinois, by his affidavit (Complainant's record page 13) explains that a portion of his affidavit was made through inadvertence, and clearly shows by his personal knowledge that the river at the point in controversy was navigable from bank to bank.

In addition to the affidavits of the pilots, the affidavit of J. L. Miller, an attorney at law of Hamilton, Illinois, is produced. Mr. Miller seems to have been particularly industrious in engaging his brother-lawyers in private conversation, and then placing his opinion as to the effect of these conversations in the form of an affidavit.

We submit that an affidavit of this character, which does not contain any statement of the facts as to the actual condition of the river, can have no weight, and can shed no light upon this controversy.

The opinion of the Court of Appeals of the State of Illinois in case of Bertschi et al. vs. Keokuk and Hamilton Bridge Co., is attached to the petition on behalf of the state of Illinois. As this opinion was reversed by the Supreme Court of Illinois in the case reported in 34 N. E. 432, the reversal being upon the ground that the authorities of Illinois had taxed more than the proper proportion of the bridge in question, this opinion should have no weight in this controversy.

As opposed to the affidavits presented by the State of Illinois, the state of Iowa presents the affidavits of some twenty-five witnesses. These witnesses detail the facts within their personal knowledge. The detailed statement

as made by the commissioners will give the court a clear idea of the bed of the main arm of the Mississippi river at the point in controversy.

It would appear by the clear weight of the affidavits, and the state of Illinois has offered no affidavits to the contrary, that the great volume of water flowing down the bed of the Mississippi river passes between the west bank of island No. 4 and the east bank of the Iowa shore. That the bed of the river at this point is of solid rock, not subject to changes by deposit, and that said bed between said points is navigable during all seasons of navigation.

One principle ground for setting aside the commissioners' report as charged by the state of Illinois is that the commissioners in locating said line followed the rule laid down by the opinion of the Supreme Court of Iowa in case of Dunleith & Dubuque Bridge Co., 55 Ia. 558, and located the boundary midway between the Illinois and Iowa banks.

The commissioners clearly negative this in their affidavits and statement, and demonstrate that the line was not measured with reference to the banks, but said boundary line was located entirely with reference to the navigability of the stream. (Complainant's record, page 10.) The measurement in Illinois was made from 200 to 250 feet west of the shore line, and the measurement from the Iowa shore was made some fifty feet east of the shore line, and these two points west of the shore of Island No. 4, and east of the Iowa shore, were located with reference to the navigability of the river at and between said points. The result of their investigations and measurements gives to the state of Illinois some 1661 feet of bridge and approach from island No. 4, and about 1481 feet of bridge and approach to the state of Iowa, and as shown by the overwhelming weight of affidavits, the east and west starting point of said line and the water between same, as it ex-

isted before the artificial obstructions described in the affidavits, was navigable for all kinds of boats during all seasons of navigation.

Mr. H. B. Whitney in his affidavit (Complainant's record 39) and S. M. Ball, in his affidavit (Complainant's record 37,) say, that during the navigable seasons there was from five to seven feet of water at this point. Mr. W. R. Hamilton in his affidavit, and Judge Edmunds in his affidavit, (Complainant's record 28 and 31,) describe the character of the landing and the depth of water as same existed in the vicinity of the warehouse located prior to the construction of the bridge on the west bank of island No 4.

David Tipton in his affidavit (Complainant's record 39), and some of the other witnesses state that the water was deeper and the landing was better on the Illinois shore than it was on the Iowa shore.

Mr. Myers in his affidavit (Complainant's record 39) states that the boats would run up the middle of the river midway from shore to shore.

The affidavits of Charles Bartlett (Complainant's record p. 42), William Dobler (Complainant's record p. 54), Jacob Heinz (Complainant's record page 50), C. C. Carpenter (Complainant's record page 40), H. R. Dickinson (Complainant's record page 56) show that even at the present time, notwithatanding the artificial obstructions that have been placed in the river, that steamboats with tows of rafts go from the Iowa shore across to the east abutment of the Keokuk and Hamilton bridge, and land said rafts, used in the lumber trade, upon the west bank of island No. 4.

The profile of the bed of the river as identified by Mr. Willey, as has been heretofore referred to, shows the water at extreme low water mark, an unusual occurrence, to have been not less than three feet at all points

betwen the Iowa and Illinois shore. A medium stage of water, which is explained by said profile, and as shown by the statement of the commissioners, (Complainant's record, p. 21.) is six feet deeper than the stage of low water.

It would therefore appear by this profile prepared prior to the construction of the bridge, at a time when the artificial obstructions to navigation had not been constructed, that in the medium stage of water there was nine feet at all points as between the objective point taken from the east and west by the commissioners in locating the boundary liue.

The location of this boundary line has been in the nature of an arbitration in which the arbitrators have made their award. It is a disposition of a controversy in a manner well recognized by courts, and one which is sustained when parties enter into an arrangement of this character. We may be pardoned if we cite an expression from this Honorable Court as to the duty of courts in sustaining the settlement of controversies by agreement of the parties. In case of Burchell vs. Marsh, 17 How., 344, this court by Mr. Justice Grier, says:

"Arbitrators are judges chosen by the parties to decide the matters submitted to them, finally and without appeal. As a mode of settling disputes, it should receive every encouragement from courts of equity. If the award is within the submission, and contains the honest decision of the arbitrators, after a full and fair hearing of the parties, a court of equity will not set it aside for error, either in law or in fact. A contrary course would be a substitution of the judgment of the chancellor in place of the judges chosen by the parties, and would make an award the commencement, not the end, of litigation. In order, says Lord Thurlow, (Knox vs. Symmonds, 1 Ves., Jr., 369,) 'to induce the court to interfere, there must be some-

thing more than an error of judgment, such as corruption in the arbitrator, or gross mistake, either apparent on the face of the award or to be made out by evidence; but in case of mistake, it must be made out to the satisfaction of the arbitrator, and that if it had not happened, he should have made a different award.'"

" Courts should be careful to avoid a wrong use of the word "mistake," and, by making it synonymous with mere error of judgment, assume to themselves an arbitrary power over awards. The same result would follow if the court should treat the arbitrators as guilty of corrupt partiality, merely because their award is not such an one as the chancellor would have given. We are all to prone, perhaps, to impute either weakness of intellect or corrupt motives to those who differ with us in opinion. "

In case of Kimberly vs. Arms, 129 U. S., 355, 9 S. C. R, 359, the case was referred to a master in chancery by agreement. This court in considering the finding of the master gave special weight to the fact that the reference was by agreement. In considering the effect of said finding the court compared same to a finding by arbitration. In the course of the opinion delivered by Mr. Justice Field, the court says:

"But when the parties consent to the reference of a case to a master or other officer to hear and decide all the issues therein, and report his findings, both of fact and of law, and such reference is entered as a rule of the court, the master is clothed with different powers from those which he exercises upon ordinary references, without such consent; and his determinations are not subject to be set aside and be disregarded at the mere discretion of the court. A reference, by consent of parties, of an entire case for the determination of all its issues, though not strictly a submission of the controversy to arbitration, a proceeding which is governed by special rules, is the sub-

mission of a controversy to a tribunal of the parties' own selection, to be governed in its conduct by the ordinary rules applicable to the administration of justice in tribunals established by law. Its findings, like those of an Independent tribunal, are to be taken as presumptively correct, subject, indeed, to be reviewed, uuder the reservations contained in the consent and order of the court, when there has been manifest error in the consideration given to the evidence, or in the application of the law, but not otherwise."

The commissioners who made the findings in this case were in effect arbitrators chosen by the parties. They were appointed at the joint request of the parties interested in the controversy; the names of the commissioners were determined upon by consent of the parties, and their finding as made was agreed to by the representatives of both parties. They were men entirely competent to decide the question submitted to them; their decision is within the authority conferred upon them; the commissioners exhibited to the court their action in detail, which indicates that they acted fairly, impartially and intelligently in the matter, and this being in the nature of an arbitration, we contend that there is no such showing as would authorize the court to interfere with the judgment of the commissioners.

We confidently assert that the record as is disclosed in this proceeding establishes beyond controversy that the main channel of the Mississippi river at the point where crossed by the Keokuk and Hamilton bridge is substantially from the west bank of Island No. 4 to the Iowa shore, and was navigable from bank to bank. That prior to the construction of the government canal, navigation for any considerable distance north of the City of Keokuk and the City of Hamilton was obstructed by reason of the Des Moines rapids, and that boats of all classes and

character engaged in the general commerce of the river, landed with equal freedom at the Iowa and Illinois shore and crossed and recrossed the river without obstruction or hinderance at all places between said points.

The state of Illinois in this controversy seems to have had her rights fully and properly protected. The court in its original opinion laid down a clear and definite rule as to how the boundary line between the states should be ascertained. The states then agreed upon a commission of three honorable gentlemen, each of whom, it appears from the facts in the record, were peculiarly well qualified by occupation, education and experience to determine a question of the character at bar. Their detailed statement clearly indicates not only that they carefully studied, but they appreciated the opinion and the rule as therein announced by this court. Their measurements were made in accordance with their best judgment. The plat indicating such measurements, and the boundary line made thereunder, has become a record of this court. The persons locally interested had full knowledge and information of the location of said boundary line at the time same was made. The proper officer of the state of Illinois authorized and directed a member of this bar to assent to the confirmation of said commissioners' report, under which authority a final decree of this court was rendered confirming the report of said commissioners. It appears by the overwhelming weight of the affidavits that the said boundary line was properly and fairly located. From the 10th of April, 1893, with full knowledge on the part of the authorities of the state of Illinois of the place where said boundary line was located, no steps were taken by them to change or modify the decree of this court as heretofore rendered.

We believe that no showing upon the merits has been made which would entitle the court to change or modify

the confirmation of said report. We further believe that the state of Illinois has no right, and this court has no jurisdiction, at this time in this proceeding, to grant the relief demanded.

The local contention between the municipalities bordering the river at this point should be finally and definitely determined, as we believe this court has already done.

We therefore respectfully but earnestly submit that the motion on behalf of the state of Illinois should be overruled and the petition supporting same should be dismissed.

Respecnfully submitted.

JOHN Y. STONE,
Attorney General of the State of Iowa.
JOHN F. LACEY,
FELIX T. HUGHES,
JAMES C. DAVIS,
Of Counsel.

[redacted]

IN THE
Supreme Court of the United States,

October Term, 1893

STATE OF IOWA, *Complainant.*

vs.

STATE OF ILLINOIS, *Defendant.*

ORIGINAL SUIT IN EQUITY NO. 5.

STATEMENT AND AFFIDAVITS ON BEHALF OF THE STATE OF IOWA IN RESPONSE TO NEW MATTER SET OUT BY STATE OF ILLINOIS IN ITS REPLY.

I.

The State of Iowa respectfully asks leave to submit the affidavits of Mr. John H. Cole and Mr. George Edmunds in response to the new matter set out in the affidavit of Mr. Moloney on behalf of the State of Illinois.

Counsel for the State of Iowa regret the complication which seems to have arisen in the office of the Attorney General of the State of Illinois. It is due to counsel on behalf of the State of Iowa to further say that the matter set forth in the affidavit of Mr. Moloney of date November 14th, 1893, was a complete surprise to the several counsel of the State of Iowa.

The conduct of this case, from its inception, has been amicable in its character. The progress of the cause in matters requiring notice to counsel has been entirely informal. Mr. George Edmunds, an attorney of high standing and long practice at the bar of Illinois, by reason of his personal acquaintance with Attorney General Hunt, and the successor of Attorney General Hunt, Mr. Moloney, has obtained from counsel for the State of Illinois agreements which have been made as the cause progressed, and when notice was necessary, has informed the Attorney General of the State of Illinois when matters occurred which required notice.

It was with some reluctance that counsel for the State of Iowa have felt obliged to set out the affidavit of Mr. Edmunds of date November 22d, 1893, but as same clearly and fairly details the facts as they actually occurred, it was deemed a duty upon the part of counsel that the Court should have this information. It has appeared to counsel for the State of Iowa, and we believe it will so appear to the Court, that from the amicable and friendly character of this controversy that the telegram sent from the Attorney General's office of the State of Illinois, on the 26th day of March, 1893, was entirely proper matter to have been forwarded. The Commission appointed by agreement had made its report; that report, unless fraudulent, would ordinarily be binding upon both parties; the charge made on behalf of the State of Illinois that the confirmation was obtained for the benefit of the Keokuk & Hamilton Bridge Company, is hardly fair in view of the fact that it was a matter of entire indifference to the Bridge Company where the line was located, the purpose being to have it definitely and permanently located at some particular point.

In a controversy of this character the State of Iowa does not desire to obtain any advantage upon a technicality, or have the boundary line located unless same is done strictly in accordance with the decision of this Court, and in accordance with the facts as they actually exist. In this connection, however, we deem it fair to submit to the Court.

1st. That under the circumstances of the case Mr. T. J. Schofield, the Assistant Attorney General of the State of Illinois, was not only authorized, but justified, in sending the telegram in question.

2d. That Judge Edmunds, acting as the Attorney General of the State of Illinois, not knowing the contents of the report in controversy, and in good faith believing that by reason of the amicable nature of the case same would be binding upon both parties, was justified in submitting the question of sending the telegram to Mr. Schofield.

II.

The Court will pardon a brief reference on behalf of the State of Iowa, to the merits of the controversy. We presume if the report of the Commissioners was now presented for the first time to the Court, the Court would confirm same, if it appeared the Commissioners acted in good faith and located the line in accordance with the facts and the rule as to the location of the boundary line as adopted in the opinion promulgated by this Court. In other words, if the report is right upon its merits, independent of the controversy which has arisen in the Attorney General's office of the State of Illinois, it should be confirmed.

Counsel for the State of Illinois misapprehend

the method by which the Commissioners arrived at the boundary line in controversy. On page 17 of the argument in reply it is contended that the Commissioners fixed the shore line and established the boundary line exactly midway between said shore lines. The affidavit of the Commissioners (Com. Rec. 16.) says: "We conclude that under the provisions of the opinion of this Court in the above entitled cause, the main channel of the Mississippi River which was navigable for steamboats that ordinarily navigate said river, eliminating from same recent artificial obstructions, is between a point 500 feet east of the easterly end of said bridge and 200 feet west of the westerly end of said bridge." And while on the plat submmitted by said Commissioners the extreme points from which the boundary line was measured is marked "east bank of river as established by commissioners," and "west bank of river as established by commissioners," their affidavits explain that the easterly bank of the navigable channel as fixed by the commissioners is 200 feet west of the easterly original shore of Island No. 4, in Illinois, and the westerly bank of the navigable channel as fixed by the commissioners is 50 feet east of the original westerly shore in Iowa. The lines marked "east and west bank" as fixed by said commissioners upon said plat being the easterly and westerly limit of the navigable channel as fixed by said commissioners.

In the affidavit of James Campbell, on behalf of the State of Illinois, (Deft's. Rec. 29.) he describes an obstruction 400 feet east of the Iowa shore and about 150 yards below where the Keokuk & Hamilton Bridge now terminates.

The affidavits of H. B. Whitney, (Com. Rec. 38), W. S. Sample, (Com. Rec. 46), John Smith, (Com.

omitting the title of same, venue and jurat, said affidavit is as follows, viz.:

"George Edmunds, being duly sworn, says that some and most of the time from March 20th to March 30th, 1893, deponent was in the office of the Attorney General of Illinois, at the request of the Attorney General and his assistant, endeavoring to perform the duties of the office, in the absence of the Attorney General on business elsewhere, and of the assistant from sickness. That about the 26th of March, 1893, there was delivered at the office a telegram stating that the commissioners in the case of Iowa vs. Illinois had made their report, and asking that the Attorney General have some one appear in the Supreme Court of the United States so that the report could be confirmed at the term then in session. That deponent, in the absence of General Moloney, took the telegram to T. J. Schofield, the Assistant Attorney General of Illinois, and Mr. Schofield telegraphed some one at Washington to appear for Illinois, in the matter. I suppose the telegram was in the name of M. T. Moloney. At this time I had no knowledge of what the report was, or where the line was fixed by said report and did not have until after April 10th, 1893. The deponent has for years been the attorney of the Bridge Co., and now states that during all his connection with that Company his opinion and the feeling of the Bridge Company has been that it was of no consequence to it, the Bridge Co., where the line was fixed, if fixed so as to prevent taxation in both states of the same property."

That affidavit Mr. Moloney should have received on Saturday, November 11th, three days before he

made his affidavit, in this cause, on the 14th of November. If Mr. Moloney received that affidavit he could no doubt have learned that the statements therein were true by inquiring of his assistant, Schofield, or from an inspection of the original telegram at Springfield telegraph office, that the telegram to Hayes was not signed in my handwriting, but was in the handwriting of T. J. Schofield, his assistant.

I further state that I never at any time sent a telegram directed to Hayes, or any other person at Washington, D. C., to which I signed the name of M. T. Moloney, or to which I procured any other person to sign the name of M. T. Moloney.

I further state that I was at the Attorney General's office on either the 1st or 3d of April, 1893. I do not think I saw Mr. Moloney at that time, yet I may have done so, but I did not see Mr Schofield. My belief is it was the 3d of April, from the fact that I find in my letter book a letter dated April 1st and none after that until April 4th. Further our town meeting was on the 4th of April and I think I was at Springfield the day before Town meeting.

Deponent further states that he has always understood this suit to be an amicable one to settle the boundary between the states. It was brought at deponent's suggestion to settle the extent to which each state could tax bridges across the Mississippi River and prevent overlapping of such taxation as for some years had existed at the Keokuk & Hamilton Bridge. with a view to that end deponent prepared a full set of pleadings for such proceedings in this Court, presenting both sides of the case, and submitted to the then Attorney General of Illinois, George Hunt, and asked him to bring suit on behalf of Illinois. Mr.

Hunt took the proposed pleadings and said he would look into the matter. After some days Mr. Hunt returned the proposed pleadings to me, declining to bring the suit, but said if Iowa would bring the suit he would answer for Illinois. I then prepared the pleadings now on file in this cause and the matter was submitted to the Attorney General of Iowa. He signed the bill and I sent a copy of the bill with an answer, (the same as now on file) for Illinois and its cross bill, and forwarded to Attorney General Hunt, at Springfield. He signed the answer and cross bill and Attorney General Stone, of Iowa, signed the answer to cross-bill and replication to answer of Illinois, and I think all were forwarded together to the Clerk of this Court, and filed by him. The effort on my part was by the pleadings to present fully and fairly both sides of the case, having personally no feeling or care and that the Bridge Company that I represented no interest as to particular point in the river at which the line should be established, its interest being in having the line established so that there could be no excuse for either state or local authorities taxing beyond the line so to be fixed.

Deponent further states that Mr. Green, of the late firm of Goudy Green & Goudy, appeared before Judge Gresham, at Chicago, on an application by S. Taber Bayles for an injunction against John W. Bertschi, to enjoin the collection of certain taxes on on said bridge for 1890. Which suit was dismissed and a bill filed in the Hancock Circuit Court in the name of said Bridge Company, against said Bertschi, collector of the County of Hancock, et al. to enjoin said tax of 1890, and on application to Judge Marsh for injunction, said Green appeared, and upon the allowance of said injunction, said Green prayed, an ap-

peall which was perfected, and on the argument in the Appellate Court an argument was filed in the name of Goudy, Green & Goudy, and deponent is of the opinion said Green argued orally, but is not positive. That while the appearance of said Green in said cause was ostensibly for the said Bertschi, collector, deponent is informed by parties at Hamilton, that the City of Hamilton paid the fees and expenses and services in said cause.

Deponent further states that while in the office of Attorney General in March, 1893, performing duties for him, deponent prepared and signed many papers and letters in the name of M. T. Moloney, Attorney General, but in all cases he added the name of T. J. Schofield, Assistant, as he was instructed to do. That deponent believes every paper signed so by him was copied in the letter press book by the proper person in the offce.

G. EDMUNDS.

Subscribed and sworn to, before me, November 22d, 1893.

JOHN D. MILLER,
County Judge, Hancock County, Ill.

That subsequently on the 26 day of November, 1893, said George Edmunds requested a return of said affidavit above referred to, stating in said request that if same was returned he would forward an affidavit slightly modified; that thereupon a letter press impression was made by affiant of said original affidavit of date November 22nd, 1893, and the original of same was returned to said George Edmunds and said George Edmunds subsequent to the return of said original affidavit above referred to forwarded

Rec. 49), Henry Conn, (Com. Rec. 51), H. R. Dickinson, (Com. Rec. 56), John H. Cole, (Com. Rec. 25) all disprove this statement. The profile of Mr. McMath, submitted by defendants, shows that after eliminating artificial obstructions recently placed in the river, that Wagner, Campbell. Brown, Ferris and Owen, (defendants' witnesses) were not correct in their statements either as to channel or deep water, as this profile plainly showed an average depth of water east of the point fixed by all these witnesses as the eastern boundary of the channel, i. e., from 300 to 400 feet east of pivot pier, greater than it is in the channel they describe with the exception of the pocket or hole near station 1600 of said profile.

If the court will now examine this profile and make the allowances for measurements taken on cribs and other artificial obstructions of recent origin, and compare it with the profile of Mr. Willey. (Com. Rec. 21-22), and the correctness of which has not been disputed, they will find that all of the above defendants' witnesses were simply mistaken as to the extent of the channel.

It is to be noted that the learned counsel for the State of Illinois fail to explain the unfairness of the plat as preseuted by McMath, and no denial in any form is made of the facts clearly showing that the soundings in the McMath plat were taken on top of cribs and other artificial obstructions recently placed in the river. No criticism is made as to the entire good faith on the part of the commissioners in making their report. Their competency to perform the work alloted to them is not questioned. It is conceded by counsel for the State of Illinois that the boundary line should be located independent of recent

artificial obstructions. We believe a careful examination of the record will disclose the fact that the merits of the controversy upon the report of the commissioners are wholly in favor of sustaining the report and that the commissioners in locating the boundary line, determined where the main navigable channel of the Mississippi River was located, and fixed the boundary in the middle of said channel.

It is respectfully submitted that the report of the commissioners should stand confirmed.

Respectfully submitted,

JOHN Y. STONE,
Attorney General, State of Iowa.

JOHN F. LACY,
FELIX T. HUGHES,
JAMES C. DAVIS,
Of Counsel.

IN THE SUPREME COURT OF THE UNITED STATES.

STATE OF IOWA, *Complainant,*
vs.
STATE OF ILLINOIS, *Defendant.*
Original No. 5.

State of Iowa,
Lee County, } ss.

I. John H. Cole, on my oath, duly administered, do depose and say, that I am the same John H. Cole who has heretofore made affidavit in this cause on behalf of the State of Iowa; that my attention has been called to the affidavit of Maurice T. Moloney, of date November 14th 1893, filed on behalf of the State of Illinois, in which Mr. Moloney refers to a telegram sent on the 26th day of March, 1893, to Walter I. Hayes; that said telegram appears to have been sent in my care at Washington, D. C., I state that on the 26th day of March, 1893, I was not in

the City of Washington, D. C., nor upon any other day in said month, but with the exception of possibly a day or two's absence I was continuously in the City of Keokuk, Iowa, where I reside, during the said month of March, 1893; that I do not know why said telegram was sent in my care, and the first knowledge or information that I had that said telegram was sent in my care was when the original telegram was exhibited to me in in connection with the affidavit of Walter I. Hayes, made in this cause; that as I had had correspondence with George Edmunds in the letter hereinafter referred to, written from the City of Keokuk, Iowa, said George Edmunds knew I was not in the City of Washington, D. C., and would therefore not have sent a telegram in my care at said place. That upon inspection of the affidavit, as made by Mr. Moloney in this cause, of date November 14th, 1893, I called upon Mr. George Edmunds at Carthage, Illinois, on the 20th of November, 1893, with a copy of the affidavit of said Moloney for the purpose of ascertaining the facts concerning said telegram; that said Edmunds, upon the said 20th day of November, 1893, detailed to me the circumstances connected with the sending of said telegram, and agreed to forward to the attorneys of the State of Iowa for use in this controversy, an affidavit setting forth said facts in detail; that on the 22d day of November, 1893, said George Edmunds sent to Keokuk, Iowa, an affidavit in his own handwriting, verified before John D. Miller, County Judge of the Hancock County Court of Illinois, which affidavit so forwarded by said George Edmunds, was in words and figures following, to-wit:

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,
vs.
THE STATE OF ILLINOIS, } Original.

State of Illinois,
Hancock County. } ss.

George Edmunds, being duly sworn, says that he is father-in-law of T. J. Schofield, the Assistant Attorney General of the State of Illinois, and was in March, last.

That at the request of the Attorney General of Illinois, deponent was at the office of the Attorney General, at Springfield, Illinois, most of the time from the 20th to the 30th of March, 1893, endeavoring to perform the duties of Attorney General. That his performance of such duty was not of his own seeking, but by request to keep the office running in the absence of the Attorney General, Moloney, on business, and absence of said Schofield, his assistant, caused by sickness.

That T. J. Schofield, said assistant, knew dedeponent had for years been attorney of the Keokuk & Hamilton Bridge Company, in Illinois, and that this cause was pending, and when deponent sent the agreement for the appointment of commissioners in this cause to the Attorney General, which he signed, in the opinion of deponent Attorney General Moloney knew the relation deponent held to the Bridge Company. He could have known by inquiring of his assistant.

That on November 10th, 1893, by request, deponent prepared, swore to and sent to Attorney General Moloney, for use by him an affidavit in this cause,

for use in this cause the affidavit of date November 27th, 1893, which is filed in this cause. Affiant states that he is familiar with the handwriting of said George Edmunds; that the letter press copy hereinabove referred to, which is attached hereto marked exhibit "A" and made a part hereof, is in the hand writing of said George Edmunds, and signed by him; that the original of said affidavit cannot be produced for the reason that said George Edmunds has declined to redeliver same for use in this cause. Affiant produces the copy above referred to upon advice of counsel of the state of Iowa in order that this court may be advised as fully as may be of all facts and circumstances connected with said telegram. Affiant further states that on or about the 23rd day of March, 1893, the commissioners heretofore appointed in this cause marked the boundary line between the state of Iowa and the state of Illinois upon the Keokuk and Hamilton bridge, and affiant was informed that the report of the commissioners had been forwarded to Washington. That thereupon, upon the 24th day of March, 1893, affiant wrote to George Edmunds a letter addressed to Springfield, Illinois, informing said George Edmunds of the fact that the report of the commissioners had gone forward and requesting said George Edmunds to have the Attorney General of Illinois authorize counsel to appear for the state of Illinois upon motion to be made by the state of Iowa asking for confirmation of the said report. That subsequent to the writing of said letter, on or about the 25th day of March, 1893, I forwarded a telegram addressed to the Hon. T. J. Schofield, notifying the Attorney General of the state of Illinois that Mr. Walter I. Hayes would present a motion for confirmation of said report on behalf of the state of Iowa; that I

kept no copy of the telegram above referred to and therefore am unable to produce a copy of same; that at the time of the sending of said letter and telegram above referred to I had no knowledge or information that Mr. George Edmunds was acting as Attorney General of the state of Illinois, or that said George Edmunds was in any way connected with the said office of the Attorney General of the state of Illinois; that my reasons for addressing George Edmunds at Springfield, Illinois, was because I had telephoned to Carthage, Illinois, to ascertain the whereabouts of said George Edmunds, and was informed by telephone that he was thenat Springfield, Illinois; that I know the location of the line between the state of Iowa and the state of Illinois as same is marked on the Keokuk and Hamiltom bridge by the commissioners, and same is not in the middle of the Mississippi river as measured from bank to bank, but said line is about ninety feet west of the middle of said river.

J. H. COLE.

Subscribed and sworn to before me this 5th day of December, 1893.

[SEAL.] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,
vs.
THE STATE OF ILLINOIS. } Original.

State of Illinois,
Hancock County. } ss.

George Edmunds, being duly sworn, says that at

the request of the Attorney General of Illinois, deponent endeavored to perform the duties of the office of Attorney General of Illinois, to the best of his ability, and in the performance of that duty deponent spent most of his time between the 20th and the 30th day of March, 1893. That by reason of the absence of Attorney General Moloney and the sickness of his assistant, the business of the office was largely behind. That during the time deponent was in said office in that capacity, Mr. Moloney was absent on business of the office most of the time, and his assistant was kept from the office all the time by sickness. That during that time deponent believes he put in an average of ten hours per day while there, answering correspondence and giving opinions, in the name and as the act of the Attorney General. That the job was not one of his own seeking. That in all of his acts as acting Attorney General deponent endeavored to perform the duties as he believed Mr. Moloney would have done it there. Deponent has no means of knowing the amount of correspondence answered or the number of opinions given, but believes it would extend into the hundreds. Every letter and every opinion, deponent believes, was copied in the office, though he did not make the copies. That deponent took no action in the name of the Attorney General that he did not then feel fully authorized to do, though in the mass of work done he may have made mistakes. That deponent did not while connected with said Attorney General office, do any act as attorney of the Keokuk and Hamilton Bridge Company or in its interest. As will be seen by a former affidavit made by me in this cause, this suit was instituted at my suggestion. (At its inception I regarded this suit an

amicable one, to ascertain and mark the boundary between the two states, not to fix any particular line but the true line, the sole interest of the Keokuk and Hamilton Bridge Company being to have the line fixed and known so as to prevent double taxation. In that view and that alone I suggested the pleadings in this cause, fully presenting the case and leaving to the court and commissioners to be appointed to designate the line, it being a matter of indifference to the company I represented at what point the line was fixed.)

G. EDMUNDS.

Subscribed and sworn to before me November 27th, 1893.

JOHN D. MILLER,
County Judge.

Office Supreme Court U. S.
FILED
Oct 26 1892
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.
Filed Nov. 26, 1892.

OCTOBER TERM, 1892.

THE STATE OF IOWA, *Complainant*,

vs.

THE STATE OF ILLINOIS, *Defendant*.

ORIGINAL SUIT.

BRIEF AND ARGUMENT FOR DEFENDANT.

GEORGE HUNT,
Attorney General, State of Illinois.

SPRINGFIELD, ILL.:
H. W. ROKKER PRINTING HOUSE.
1892.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

THE STATE OF IOWA, *Complainant.*

VS.

THE STATE OF ILLINOIS, *Defendant.*

ORIGINAL SUIT.

BRIEF AND ARGUMENT FOR DEFENDANT.

GEORGE HUNT,
Attorney General, State of Illinois.

May it Please the Court:

The pleadings constitute the entire record in this cause, and the object of the proceeding is to ascertain and fix by judicial finding the boundary line between the States of Iowa and Illinois.

The boundary line between these two States is fixed by two Acts of Congress, passed at different times, and differing slightly in verbiage. These two acts must be reconciled.

1.

The Act of Congress of April 18, 1818, to enable the people of Illinois to form a Constitution and State Government, and for the admission of such State into the Union after defining the northern boundary thereof, proceeds "Thence west to the middle of the Mississippi river, and thence down along the middle of that river to its confluence with the Ohio river." (I. Star & Curt, p. 50.) The same language concerning this boundary has been preserved in the Constitutions of said State of 1818, 1848 and 1870. Id. pp. 55, 68, 99.

The Enabling Act for Iowa, passed in 1848, (5 U. S. Stat., p. 742) gives the eastern boundary of said State as follows: "Beginning at the mouth of the Des Moines river at the middle of the Mississippi, thence by the middle of the channel of that river to a parallel of latitude," &c.

2.

Let us see if we can ascertain the proper meaning of the expression, "middle of the river," as used in this Enabling Act.

In Wheaton on International Law (3d Eng. ed.), Sec. 200, p. 297, it is said:

"By the Treaty of Peace concluded at Paris in 1763, between France, Spain and Great Britain, the Province of Canada was ceded to Great Britain by France, and that of Florida to the same power by Spain, and the boundary between the French and British possessions in North America was ascertained by a line drawn throngh the *middl*

of the river Mississippi, from its source to the Iberville, and from thence through the latter river and the lakes of Maurepas and Pontchartrain to the sea."

The boundary line between the territories belonging respectively to Great Britain and France, as fixed by the treaty of 1763, was the middle of the Mississippi river. It needs no argument to show that an international boundary line, established by this language, would be the middle of the main channel or channel of commerce. Every consideration, both of dominion and commercial equality, would give to the language this meaning. Where the Enabling Act creating a State out of part of the territory embraced in the treaty, uses the same language to define the boundary as that used in the treaty, it will certainly receive the same construction as that given to the treaty, unless for the most obvious reasons another construction should obtain.

After the peace between the United States and Great Britain, the territory on the east of the Mississippi passed to the United States, while that on the west remained with France.

Unquestionably the boundary line remained the same. The same consideration which fixed it in the old relations would retain it in the new.

Subsequently the State of Illinois was created out of the territory on the east of this boundary line, and the State of Iowa out of that on the west.

The middle of the Mississippi river thus became the boundary between these different States. How was the dividing line to be ascertained? The same author says (Sec. 192, p. 291):

"Where a navigable river forms the boundary of con terminous States, the middle of the channel, or *thalweg*, i generally taken as the line of separation between the two States, the presumption of law being that the right of nav igation is common to both; but this presumption may b destroyed by actual proof of prior occupancy and long un disturbed possession, giving to one of the riparian propri tors the exclusive title to the entire river."

Therefore, according to this eminent author, the middl of the *channel* of the river is the boundary line. What i the *channel* of the river? Clearly, it is not the same thing as the bed of the river. Wheaton says (Sec. 202, p. 301)

"The *channel* of the Mississippi was remarkably winding crosssing and re-crossing perpetually from one side to the other of the *general bed of the river*."

The general bed of the river is the space between th two shores, but the channel of the river is the navigabl portion of the river—that part of the river suited for and usually used for the purposes of navigation. As Wheaton says, the middle of the channel or *thalweg* is taken as the line of separation between two States, because the pre sumption of law is, that the right of navigation is com mon to both. What each nation or power would insis upon was an equal right to the navigation of the river This could not be obtained if the river was divided by drawing a line between two shores unless the width of th navigable channel was coincident with the distance betwee the two shores. Each nation demands one-half of th navigable channel in whatever part of the river it is lo cated, and the States created out of the territory be longing to these nations would take the same boundaries

Wheaton also comments on what is called in the international law "innocent passage," permitted in streams and bays by the nation which has jurisdiction over the same. Such passage would be permitted for commercial purposes in times of peace, but such right is an imperfect right, as the author points out, which may be interrupted and prevented by the nation owning the navigable water.

Therefore, where the middle of the river is made the boundary, the line is drawn in the middle of the navigable channel. It is in this sense that the words are used in the treaty of 1763.

In Creasy on International Law, p. 222, Sec. 231, it is said:

"It has been stated that where a navigable river separates neighboring States, the *thalweg*, or middle of the navigable channel, forms the line of separation. Formerly a line drawn along the middle of the water, the *medium filum aquae*, was regarded as the boundary line; and still will be regarded *prima facie* as the boundary line, except as to those parts of the river as to which it can be proved that the vessels which navigate those parts keep their course habitually along some channel different from the *medium filum*. When this is the case, the middle of the channel of traffic is now considered to be the line of demarcation."

In Halleck on International Law, Vol. 1, p. 145, Sec. 23, it is said:

"Where the river not only separates the conterminous States, but also their territorial jurisdictions, the *thalweg*, or middle channel, forms the line of separation through the bays and estuaries through which the waters of the river flow into the sea. As a general rule, this line runs through the middle of the deepest channel, although it may divide the river and its estuaries into two very

unequal parts. But the deeper channel may be less suited, or totally unfit for the purposes of navigation, in which case the dividing line would be in the middle of the one which is best suited and ordinarily used for that object."

Cited with approval in Wharton Digest of International Law of the United States, Vol. 1, p. 97.

While we readily admit that the right of navigation which would fix the middle of the navigable channel as the boundary between separate or alien nations, does not operate with the same force between the States of the American Union, yet the question remains, where a boundary line has been fixed between two alien powers, and the same line, described in practically the same language, becomes the boundary between two States of the American Union, will the changed political condition so affect the force of the language used as to change the boundary line?

The Enabling Act for admitting Wisconsin, passed in 1846, (9 U. S. Stat., p. 56), gives the western boundary of that State as "thence down the center of the main channel of that (Mississippi) river to the north-west corner of the State of Illinois." The north-west corner of the State of Illinois, therefore, must be in the middle of the main channel of the river; and it is down along the middle of the main channel of the river that the western boundary of Illinois runs. If the words, "in the middle of the river," in the Enabling Act of Illinois, and the words, "middle of the main channel," in the Enabling Acts for Iowa and Missouri, do not describe the same line, then it would result that there is some portion of the river which would be in none of the States,—a construction which could not be allowed.

In *Buttenuth* v. *St. Louis Bridge Co.*, 123 Ill. 535, the court says (p. 551):

"The suggestion, Congress, by its Enabling Acts, may have established one line in the Mississippi river for the eastern boundary for Missouri, and another line, farther east, for the western boundary of Illinois, has nothing, in law or in fact, upon which to rest. The whole legislation on this subject shows, as before remarked, it was the intention of Congress to make the river a 'common boundary' between these States, and the expressions used in both Enabling Acts, although the words used may not be the same, make the middle of the main channel of the permanent river the boundary line."

It will be observed that the court here says that the middle of the *main channel of the permanent river* is the boundary line. The permanent river is one thing, and the main channel of the permanent river is another thing. By the permanent river is doubtless meant the river between the permanent shores at an ordinary stage of water. If the middle of that space were the boundary line, of course the court would have said that the middle of the permanent river was the boundary line; but the court does not say that. It says that the middle of the main channel of the permanent river is the boundary line. The main channel, therefore, is not the same thing as the river from shore to shore. What then is the main channel of the river? We have seen that it is the channel which is best suited and is usually used for the purposes of navigation—the channel of commerce used by vessels in the carrying trade.

In *Dunleith & Dubuque Bridge Company* v. *The County of Bubuque*, 55 Iowa 558, the Supreme Court of Iowa had this question of the State boundary between Iowa and Illinois

before it, in a case involving the taxation of a bridge across the Mississippi river. The court in that case says that but one question was presented for its determination, and that question was, what line was indicated by the words "middle of the main channel" in the act of Congress admitting Iowa to the Union. The court says that there are two meanings to the word "channel"; one the bed over which the water flows from bank to bank, and the other the line of the deep water which vessels follow, which is the sense in which the word is familiarly used by the boatmen of the Mississippi river. The Iowa court decided that the words "main channel" in the Act of Congress meant the bed of the river from bank to bank.

The same question came before the Supreme Court of Illinois in the case *Buttenuth* v. *The St. Louis Bridge Co., supra.* The question arose in the same manner in which the question arose in the Iowa case, viz., the taxation of a bridge across the Mississippi river. The Supreme Court differs from the Supreme Court of Iowa in the case above referred to, and decides that the words, "middle of the river," do not mean a line midway of the water surface; that the words "middle of the river," and "middle of the main channel," are synonymous, and the words "main channel," as used in the Acts of Congress, mean that space within which vessels can, and usually do, pass; that this expression does not include the shallow water of the stream, which at some seasons of the year may be impossible of navigation, but it is the "channel of commerce," upon which each nation or State demands the right to move its products without any interference from the State or nation occupying the opposite shore. The court says (p. 547):

"When applied to rivers as boundaries between States, the phrases, 'middle of the river,' and 'middle of the main channel,' are equivalent expressions, and both mean the center line of the main channel,—or, as it is most frequently expressed, the 'thread of the stream.' Should the expression, 'middle of the river' be construed to mean a line midway of the water surface, that would give no permanent boundary that could be ascertained. It would be at one point at one time, and distant away at another. Had the boundaries of Illinois been fixed at the time of the high water in 1844, and the middle of the river opposite St. Louis be held to be a line midway of the surface of the water, that line would then have been far east of the present city of East St. Louis, and on the waters receding, it would have shifted back toward the west, nearer the city of St. Louis. So unsatisfactory a proposition as that will not be adopted. It would lead to insurmountable difficulties. Some light will be cast upon the subject of inquiry by first ascertaining, as near as may be, the meaning of the words, 'main channel,' 'mid-channel,' middle of the current,' as those terms are used in the adjudged cases and in the text-books that shall be examined.

"The definition of the word 'channel,' given in the most recent edition of Webster's Dictionary, is, 'the bed of a stream of water, especially the deeper part of a river or bay where the main current flows.' The case of *Dunleith and Dubuque Bridge Co.* v. *County of Dubuque*, 55 Iowa 558, while this court does not approve the decision of the case contains a very acurate definition of the word 'channel,' as commonly used by river men. It is, 'the word channel, when employed in treating subjects connected with the navigation of rivers, indicates the line of the deep water which vessels follow.' In *Rowe* v. *Smith*, 51 Conn. 256, it is said the expression, 'middle of the channel of the bay or harbor,' does not refer to the thread of deepest water, but to that space within which ships can and usually do pass.' It is apprehended it is in this sense the expressions, 'middle of the river,' 'middle of the main channel,' 'mid-channel,' 'middle thread of the channel,' are used in enabling Acts of Congress and in State constitutions es-

tablishing State boundaries. It is the free navigation of the river,—when such river constitutes a common boundary, that part on which boats can and do pass, sometimes called 'nature's pathway,'—that States demand shall be secured to them. When a river, navigable in fact, is taken or agreed upon as the boundary between two nations or States, the utility of the main channel, or, what is the same thing, the navigable part of the river, is too great to admit a supposition that either State intended to surrender to the State or nation occupying the opposite shore, the whole of the principal channel or highway for vessels, and thus debar its own vessels the right of passage to and fro for purposes of defense or commerce. That would be to surrender all, or at least the most valuable part of such river boundary, for the purposes of commerce or other purposes deemed of great value to independent States or nations."

The court then cites certain cases as illustrative of this point, and, after deciding that the middle of the main channel of the permanent river is the boundary line, as we have quoted above, proceeds (p. 551):

"In such cases the principle is as stated by Mr. Woolsey, in his work on International Law, Sec. 58: 'Where a navigable river forms the boundary between States, both are presumed to have free use of it, and the dividing line will run in the middle of the channel, unless the contrary is shown by long occupancy or agreement of parties.' Commercial considerations make it imperative, where States or nations are divided by a navigable river, each should hold to the center thread of the main channel or current along which vessels in the carrying trade pass. That is the 'channel of commerce,'—not the shallow water of the stream, which, at some seasons of the year, may be impossible of navigation,—upon which each nation or State demands the right to move its products without any interference from the State or nation occupying the opposite shore. So important has the right ever been deemed, it is thought to be embraced in all treaties, cessions, ordinances, statutes

and constitutions made, enacted or adopted in regard to the Mississippi river since the Federal government was organized. It was the great desire to secure this important privilege that gave rise to all the efforts on the part of the general government to obtain the control of the Mississippi river from its source to that point where it empties into the gulf and connects with the sea."

This case, then, decides that the boundary line between the States of Iowa and Illinois is the middle of the navigable channel of the river, along which vessels in carrying trade can and usually do pass—the channel of commerce.

The court decides that the middle of the river in the Enabling Act means the middle of the main channel, and that the main channel of the river is the space in which vessels can and usually do pass, and does not include the shallow water of the stream, which, at some seasons of the year, may be impossible of navigation, but is the channel of commerce; and, after so defining the main channel, the court then says:

"This court has no hesitation in coming to the conclusion that all of that part of the bridge and its approaches that lies east of the main line of the channel of the river, is within the jurisdiction of the State of Illinois for the purposes of the State and local taxation."

In *St. Louis* v. *Rutz*, 138 U. S. 226, the court says (p. 248):

"The Enabling Act of April 18, 1818, 3 Stat. 429, Sec. 2, under which Illinois was organized as a State and admitted into the Union, made 'the middle of the Mississippi river' the western boundary of the State. The Enabling Act of March 6, 1820, 3 Stat. Sec. 2, under which Missouri was organized as a State and admitted into the Union, made the 'middle of the main channel of the Mississippi river' the eastern boundary of Missouri, so far as its boundary

line was coterminous with the western boundary of Illinois. It has been held by the Supreme Court of Illinois, *Buttenuth* v. *St. Louis Bridge Co.*, 123 Illinois 535, that these two Enabling Acts are to be construed as *in pari materia*, and that the common boundary line between Missouri and Illinois is the 'middle of the main channel of the Mississippi river.' The 'middle of the main channel of the Mississippi' has been constantly treated as the eastern boundary of the State of Missouri. *Jones* v. *Soulard*, 24 How. 41: *The Schools* v. *Risley*, 10 Wall 91."

Therefore, the boundary line between Illinois and Iowa is the *middle of the main channel* of the Mississippi river. Is the main channel of the river the same thing as the river from shore to shore? The authorities show clearly the distinction between the two.

Angell on watercourses says:

"In ascertaining the thread of the river it would be proper to take the middle line between the shores on each side without regard to the *channel* or lowest and deepest part of the stream."

This clearly shows the distinction between the channel and the river from shore to shore. Again from the same author:

"It is apparent that the rights of riparian proprietors on opposite banks of the stream do not depend upon and are not affected by the *locality of the channel* through or along which the larger or even the chief and principal part of the water flows."

This quotation also shows the distinction between the channel and the bed of the river from shore to shore.

There is but one point in controversy in this case, and that we believe has been presented at sufficient length by both parties. It is important that it shall be determined, to the end that limits of the taxing power as well as the

general jurisdiction of each of these States shall be defined. We join with counsel for complainant in the request that a commission be appointed to establish and mark the common boundary line of these two States on the several bridges crossing the Mississippi river between them.

Respectfully submitted.

GEORGE HUNT.

Attorney General, State of Illinois.

Supreme Court U. S.
FILED.
OCT 11 1893
JAMES H. McKENNEY,
CLERK.

No. 5 Orig.

Motion papers for Respondent.

Filed Oct. 11, 1893.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1893.

THE STATE OF IOWA
vs.
THE STATE OF ILLINOIS.

ORIGINAL SUIT.
IN EQUITY.

MOTION PAPERS ON APPLICATION OF THE STATE OF ILLINOIS,

TO SET ASIDE ORDER
CONFIRMING COMMISSIONERS' REPORT.

M. T. MOLONEY,
ATTORNEY GENERAL OF THE STATE OF ILLINOIS.

A. W. GREEN,
HENRY S. ROBBINS,
OF COUNSEL.

BARNARD & GUNTHORP, PRINTERS, CHICAGO.

IN THE SUPREME COURT OF THE UNITED STATES.

The State of Iowa, }
vs. }
The State of Illinois. }

Now comes the defendant, the State of Illinois, and makes application to the court for leave to move the court to set aside the order entered herein on the tenth day of April, 1893, confirming the report of the commissioners appointed to ascertain and mark the boundary line between the State of Illinois and the State of Iowa, as is more fully stated in the annexed motion. Said application is based upon the petition filed herewith, and the affidavits attached thereto, and the brief filed herewith.

M. T. MOLONEY,
Attorney General, State of Illinois.

A. W. GREEN,
HENRY S. ROBBINS,
Of Counsel.

IN THE SUPREME COURT OF THE UNITED STATES.

The State of Iowa }
vs.
The State of Illinois. }

Now comes the defendant, the State of Illinois, and moves the court to set aside the order entered herein on the tenth day of April, 1893, confirming the report of the commissioners filed on the thirtieth day of March, 1893, wherein said commissioners ascertained and marked the boundary line between the state of Illinois and the state of Iowa at the Keokuk and Hamilton bridge at Keokuk, Iowa, and in support of said motion said defendant, the State of Illinois, files the petition and affidavits hereto annexed, and also the brief filed herewith.

M. T. MOLONEY,
Attorney General of the State of Illinois.

A. W. GREEN,
HENRY S. ROBBINS,
Of Counsel.

IN THE SUPREME COURT OF THE UNITED STATES.

The State of Iowa,
vs.
The State of Illinois.

The defendant, the State of Illinois, respectfully represents to this court that the subject matter of this suit was the ascertainment of the boundary line between the states of Iowa and Illinois; that on January 3, 1893, an interlocutory decree was entered herein, wherein it is ordered, adjudged and declared by this court that the boundary line between the state of Iowa and the state of Illinois is the middle of the main navigable channel of the Mississippi River at the places where the nine bridges mentioned in the pleadings cross said river; and it is further ordered that commissioners be appointed to ascertain and designate at such places the boundary line between the two states, such commissioners consisting of three persons to be named by the court on the suggestion of counsel, and to be required to make a proper examination and to delineate on maps prepared for that purpose the true line as determined by this court, and to report the same to the court for its further action.

This petitioner further shows that on March 6, 1893, a joint request for the appointment of commissioners to fix the boundary line on the Keokuk and Hamilton bridge was presented to this court asking for the appointment of Montgomery Meggs, John R. Carpenter and Albert Wempner as such commissioners; that in pursuance of such joint request an order was entered on March 7, 1893, appointing the above named persons commissioners to locate and mark the boundary line between the said states at the Keokuk and Hamilton bridge, and report at once their action in

that regard before proceeding to ascertain the line or mark the same at the other bridges, and that afterward they determine and mark the said state line at the other eight bridges, as requested by either party, and report the same. That on March 30, 1893, the said commissioners filed their report in writiag in this court, wherein they reported that they had fixed the boundary line between Iowa and Illinois on the Keokuk and Hamilton bridge at Keokuk, Iowa, and that they find that said boundary line is situated one thousand and forty-one and 65/100 feet east of the center of the draw span, and submitted with their report a plat showing their measurements along the bridge; that on April 10, 1893, upon the application of the state of Iowa, an order was entered by this court confirming said report.

Your petitioner further shows that at the time that the joint request for the appointment of commissioners was signed by the Attorney General of Illinois, a change of state officers had just taken place in the state of Illinois, and the said Attorney General, who signed said joint request and who also signs this petition on behalf of the state of Illinois, had been but a few days in office, and was not at all familiar with the proceedings in this cause; that said joint request was presented to him by Mr. George Edmonds, a practicing lawyer of the state of Illinois.

Your petitioner further shows that no notice was ever given to its attorney general, or in any way to the state of Illinois, that the said commissioners had made their said report, or that an application would be made to this court to confirm any report of said commissioners; that not until after the final adjournment of this court at its last term did the attorney general of the state learn that a re-

port had been made by the said commissioners, and that said report had been confirmed.

Your petitioner further represents that the said commissioners either must have wilfully disregarded the decision and the interlocutory decree of this court, or have totally misunderstood the same. That by their report the commissioners marked the boundary line between the two states at a point midway between the west bank of the river and the east bank of the river; that this fixes the boundary line substantially at the place contended for by the State of Iowa; that the State of Iowa claimed that the middle of the main body of water of said river was the boundary line irrespective of where the navigable channel or channel of commerce might be; that the State of Illinois claimed that the boundary line was the middle of the main navigable channel, which was and is the channel of commerce. The decision of this court, after considering both contentions, decided that the controlling consideration is that which preserves to each state the right of navigation on the river, and that therefore the boundary line is the middle of the main navigable channel and in its interlocutory decree declared that the boundary line between the State of Iowa and the State of Illinois is the middle of the main navigable channel of the Mississippi River.

This petitioner further states that the main navigable channel of the Mississippi River, as appears from the affidavits hereto attached, is near the Iowa shore; that the west line of such channel is near where the pivot pier of said Keokuk and Hamilton bridge now stands, and the said channel extends eastward a distance of about four hundred feet; and that the middle of that channel is, under the decision of this court, the boundary line between the two states; that this line is at least eight hundred feet west of the

line as fixed by the said commissioners; that at the point fixed by said commissioners the river is not navigable, and never has been navigable in the ordinary stage of water for vessels engaged in the carrying trade upon said river, nor in fact has the portion of said river, east of the portion of the said river above mentioned as the navigable channel thereof, been a part of the navigable channel of the river nor used by said vessels for the purposes of navigation, as more fully appears by the affidavits hereto annexed.

Wherefore your petitioner, the State of Illinois, prays that the said order of April 10th, 1893, confirming the report of said commissioners, may be set aside, and that new commissioners may be appointed to mark said boundary line in accordance with the decision of this court, or, that this cause be referred to some Circuit Court of the United States or a Master in Chancery thereof to take proof in regard to the main navigable channel of the Mississippi River and the middle line thereof, and report the same to this court.

And your petitioner will ever pray, etc.

M. T. Moloney,

Attorney General of State of Illinois.

A. W. Green.

Henry S. Robbins.

Of Counsel.

IN THE SUPREME COURT OF THE UNITED STATES.

The State of Iowa, }
vs.
The State of Illinois. }

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

J. L. Miller, being duly sworn, doth depose and say as follows:

I am, and for four years last past, have been a practicing lawyer in the state of Illinois, residing and practicing in the city of Hamilton, in Hancock County, in the said state of Illinois; that in 1891 litigation arose between the Keokuk and Hamilton Bridge Company on the one side, and the City of Hamilton, the Township of Montebello, in said Hancock County, and School District Number Three of said Township, in regard to the assessment made on property of the Bridge Company, in said municipal corporations, for the purposes of taxation, and I was employed by such corporations to assist on their behalf in such litigation. The main question in such litigation was the same question that is made by the pleadings in this suit, namely, the location of the boundary line between the state of Illinois and the state of Iowa. The first suit was a suit brought by a stockholder of the Bridge Company against John W. Bertschi, County Treasurer and ex-officio Collector of Hancock County, and William L. Guthrie, Assessor of Montebello Township, to restrain the collection of the taxes of 1890, the main allegation in the bill being that the Township Assessor had assessed property of the Bridge Company in the state of Iowa, the contention being that the boundary line was

midway between the shores, and the Township authorities claiming that the boundry line was the middle of the channel of commerce, which was many hundred feet west of the center line between shores. That bill was dismissed.

Shortly thereafter, the Keokuk and Hamilton Bridge Company filed another bill against the same parties, in the Circuit Court of Hancock County, for an injunction, making the same claim as to the boundary line, and the defendants making the same defense. A temporary injunction was granted as prayed for in the bill by the Judge of the Circuit Court. From the order granting such injunction an appeal was prayed to the Appellate Court of the State of Illinois for the Third District, and upon that hearing a decision was rendered reversing the order for an injunction and holding in accordance with the contention of the Township authorities, a copy of which opinion is hereto annexed.

In all that litigation the counsel for the Bridge Company was Mr. George Edmonds, a practicing lawyer of the state of Illinois.

In regard to this suit, I have made inquiries in regard to its institution and conduct, with the following result: I have made inquiries of Mr. James C. Davis, whose name is signed to the original bill in this case as counsel, and have learned from him that he was employed in the case by Mr. Edmonds, and that he was paid for his services by the Keokuk and Hamilton Bridge Company, and that he understood the expenses of the suit, including the payment of the commissioners who were appointed to fix the boundary line by the order of this court, were paid by the Bridge Company. I also made inquiries of Mr. John Y.

Stone, Attorney General of the State of Iowa, whose name is signed to the bill, and learned from him that he knew nothing about the case, except that he filed the bill and the answer, and I was told by Mr. Stone that none of the expenses of the suit had been paid by the State of Iowa.

In looking over the record of this case, I have ascertained that a motion was made on March 30, 1893, by the State of Iowa to confirm the report of the commissioners appointed to determine and mark the boundary line between the states of Iowa and Illinois on the Mississippi River at the Keokuk and Hamilton bridge, and that said motion appears to be signed by J. H. Cole and Walter I. Hayes as attorneys for plaintiff; that J. H. Cole is and for some years last past has been the superintendent of the Keokuk and Hamilton Bridge Company.

I have also learned from other sources that the compensation and expenses of the commissioners to fix the boundary line were paid by the Keokuk and Hamilton Bridge Company.

In the above mentioned suit in the state court, Albert Wempner made an affidavit, a certified copy of which is hereto annexed, the original being on file in the office of the clerk of the Circuit Court of Hancock County, and he is the same Albert Wempner who was one of the commissioners appointed to fix the boundary line, and who signed the report as one of such commissioners fixing the boundary line which is a part of the record in this case.

On September 5, 1893, I met John R. Carpenter, one of the commissioners appointed by this court to mark the boundary line between the two states, and had a conversation with him. In that conversation said Carpenter

stated that under the decision of this court the middle of the navigable channel was not the boundary line, that while the commissioners could not be very certain what the court meant by its decision, they decided that the boundary line should be the middle of the main arm of the river without any reference to the portion thereof that was used as the channel of navigation. He also informed me that the Keokuk and Hamilton Bridge Company had paid the expenses of the commissioners.

J. L. MILLER.

Subscribed and sworn to before me this 21st day of September, A. D. 1893.

[SEAL.] JENNIE MULLEN,
Notary Public,
Cook County, Ill.

STATE OF ILLINOIS. APPELLATE COURT—THIRD DISTRICT.

At an Appellate Court, begun and held for the Third District of the State of Illinois, at Springfield, on the Third Tuesday in November, A. D. 1891.

Present:

Hon. GEO. W. WALL, *Presiding Justice.*
Hon. GEO. W. PLEASANT, *Justice.*
Hon. CARROLL C. BOGGS, *Justice.*

To wit: On the 3d day of December, A. D. 1891, there was filed in the office of the Clerk of said Court an opinion of said Court, in the words and figures following:

John W. Bertschi, Treasurer, &c., and William L. Guthrie, Assessor, &c.,
Appellants,
vs.
The Keokuk & Hamilton Bridge Company,
Appellee.
} *Appeal from Hancock.*

STATE OF ILLINOIS, APPELLATE COURT, THIRD DISTRICT. MAY TERM, 1891, FILED.

John W. Bertschi, County Treasurer, and *ex officio* Collector of Hancock County, and William L. Guthrie, Assessor of Montebello Township.
Appellants,
vs.
The Keokuk and Hamilton Bridge Company,
Appellee.
} *Appeal from Hancock.*

PLEASANTS, J.:

This is an appeal from an interlocutory order granting an injunction against the collection of the taxes for the year 1890, levied for state, county and other purposes, upon appellee's bridge across the Mississippi river between the cities of Hamilton, Illinois, and Keokuk, Iowa.

Appellee questions the jurisdiction of this court on the ground that the case relates to revenue.

That such is its character is clear from *Potwin* v. *Johnston*, 106, Ill., 532, and *Herhold* v. *City of Chicago*, *ibid.*, 547; and section 88 of the Practice Act declares that in such cases, among others there mentioned, the appeal "shall be taken "directly to the Supreme court." The jurisdiction of this

court is appellate only, and until July 1, 1887, could be exercised only upon "final judgments, orders or decrees." This is so expressed in all the statutory provisions defining its jurisdiction, except the section above referred to. That section however is to be taken in connection with Sec. 67 as containing the exceptions therein referred to, and since the rule stated in Sec. 67 relates to final orders only, so must the exceptions stated in Sec. 88. But the act of June 14, 1887, conferred upon the Appellate courts jurisdiction on appeal from "an *interlocutory* "order or decree entered in *any* suit pending in any court "in this state granting an injunction." Thus, if the order is "interlocutory" and grants an injunction, the jurisdiction is plainly conferred, whatever may be the character of the "suit" or case.

It is further said that this act is unconstitutional, but no reason is suggested in support of that proposition, nor do we see any ground on which its validity can be held to be really in question.

Upon the merits the bill claims that the assessment was fraudulently made excessive and that a large part of the property included in it was fixed in the State of Iowa. The description was of "all the lands of The Keokuk and "Hamilton Bridge Company situated in Hancock county, "Illinois, and lying and being in and on Island No. 4, in "the south-west quarter of section thirty (30), in town-"ship five (5) north, range eight (8), west, in said "county, and extending westwardly into the Mississippi "river to the state line between the States of Illinois and "Iowa and more particularly described as follows, viz: "a strip of land eighty feet wide, more or less, the center "line of said strip of land commencing at a point in the "center of Railroad avenue in the plat of ground known

"as the Keokuk and Hamilton Ferry and Manufacturing "Company's Addition to the city of Hamilton, in said "county, 707¾ feet south, 72 degrees 40′ east of the "center of the east end of said bridge, thence running "north 72 degrees 40′ west to the east end of said bridge, "thence continuing the same course along the center line "of said bridge to the State line between the states of Illi- "nois and Iowa, including the slope walls, embankments, "abutments, piers and bridge structure and improvements "thereon, in Sec. 30, T. 5, R. 8." It was assessed by the town assessor at $95,000, which the Board of Equalization reduced to $92,150, and the taxes extended thereon amounted to $3,087.02.

The bill avers that the bridge was completed in June, 1871; that the fair cash value of all that part of it situated in Illinois was not on May 1, 1890, nor has been since, over $60,000, and that the assessment included at least 716 feet, and as complainant believes, over 900 feet of it in Iowa. Affidavits were filed in support of the bill, and not directly contradicted, setting forth the actual cost of portions of the bridge and estimates of the cost in 1890 of other portions, and of steel bridges which tended to show that the part in Illinois, of the same kind, or of steel, and of considerably greater strength, could have been constructed in 1890 for $90,000, and others to the effect that real estate in the town of Montebello was generally assessed at one-third of its estimated cash value or less.

But as the Supreme court say in *Pacific Hotel Co.* v. *Lieb*, 83 Ill., 609, "the value of property is a matter of "opinion, upon which different minds, with equal oppor- "tunities of knowledge and actuated by the same honest "desire to arrive at the truth, are liable widely to differ."

This is especially true where, as in that case and here, the property is used in connection with a franchise which is practically a monopoly. It may be out of all proportion to its cost, and not ascertainable by comparison with other property because of its peculiar character. It is averred in the answer under oath and not denied, that the bridge company has a capital stock of $1,000,000, and a large bonded indebtedness, and that the bridge with its appurtenances is substantially all the tangible property it owns or ever did own. What income it yields complainant has not seen fit to show. It appears that appellant Guthrie was the Township Assessor from 1882 to 1885, inclusive, and in each of those four years assessed this same property, including what is now claimed to be in Iowa, at $125,000. The bill in effect admits that the part conceded to be in Illinois is worth $60,000, and avers that the part assessed which is claimed to be in Iowa, is the most valuable part of the structure, excepting the draw, but does not state its value. This part may be a third or half of the bridge proper, and for aught that is averred may be worth "over" $35,000; and unless it appears that Guthrie knew or believed it was in Iowa, the alleged excessiveness of the assessment, as bearing upon the question of its honesty, is to be considered upon the assumption that it was in Illinois. The assessments of 1882 and 1884 were raised by the Board of Equalization to $126,250; that of 1883, was reduced to $120,000; and that of 1885, to $116,250. Those of 1886-7-8, not shown, were equalized respectively at $117,500, $112,500 and $115,000. Neither of these assessments was objected to by the Bridge Company, and the taxes extended on them as equalized, were paid in full without complaint. It is not

claimed that this acquiescence estops objection to the assessment here in question, but it certainly tends to show that the complainant did not think those previously made fraudulent or grossly excessive, and did think all the property included was in Illinois, or else that the part now conceded to be in Illinois, was properly so assessed. Still, further, the assessment here in question was objected to by the company's agent before the town board of review, and again before the board of supervisors; and those boards after hearing him fully—the one unanimously and the other with only two members dissenting—refused to reduce it. The effect of this action, as evidence, is met with the simple averment that these boards also in thus refusing acted fraudulently.

If, upon all this evidence, it should be conceded that the assessment was at all excessive, we cannot think it so clearly and grossly so as of itself to show fraud. The charge of fraud, based upon that ground, allows too little for honest differences of opinion, includes too many persons presumably honest and sensible, and apparently without any appreciable interest to commit or approve it, and confesses too much unexplained indifference of complainant for a series of years to alleged rights and interests which were hardly less clear and important then than now. Such concession would therefore be of no avail in this proceeding.

For it is settled that mere excessiveness of an assessment will not authorize a court of chancery to interfere with it. The power to assess is given to the assessor. In exercising it he acts judicially, and his honest misjudgment can be corrected only by the town board of review if the assessment is made before the fourth Monday of June, or by the board of supervisors, if made after

that date. *Porter* v. *Railroad Co.*, 76 Ill., 595; *Ottawa Glass Co.* v. *McCaleb*, 81 *id.*, 560; *People* v. *Big Muddy Iron Co.*, 89 *id.*, 116; *Gage* v. *Evans*, 90 *id.*, 569; *Buttenuth* v. *St. Louis Bridge Co.*, 123 *id.*, 540. These cases and others cited in them, hold that the overvaluation, to warrant the interference of chancery, must be fraudulent.

In *Connecting Ry. Co.* v. *The People*, 119 Ill., 184, the refusal by the court below of an offer to prove it fraudulent by the mere fact and degree of its excessiveness was approved, and the general rule applied, "that "fraud being a conclusion of law, it is therefore incum-"bent on the party who would set it up to state the facts "relied upon as constituting it."

While the posibility of a valuation so grossly out of the way as thereby to show it could not have been honest has been recognized, *City of Chicago* v. *Burtice*, 24, Ill., 489; *Pacific Hotel Co.* v. *Lieb*, and *Gage* v. *Evans*, *supra*, the actual occurrence of such seems to be unknown to the courts.

Besides those going to show that this assessment was excessive, the only facts alleged as tending to show it was fraudulently made so are, (1) that while Guthrie was assessing the property of the town the agent of the company stated to him the condition, length and value of said bridge in Illinois as including less than 1,100 feet, and exhibited to him sales of quite a number of parcels of real estate in the town of Montebello as showing its value, and that the assessment of the same was less than one-third of such value; (2) that the assessors of the several towns in Hancock County, at their meeting held on April 30, 1889, agreed to assess real estate at eight per cent. less than it was assessed in 1889, and that the bridge was as-

sessed in that year at $75,000; (3) that said Guthrie assessed the bridge to the east end of the draw, but refused to make his description so show, and (4) that he knew the east end of the draw was many feet west of the state line.

It is not denied that he assessed the bridge to the east end of the draw, nor that other real estate in the town generally was assessed at no more than one third of its fair cash value.

But whether the sales referred to in the first of these averments were for cash, or on what terms, does not appear; nor does the value of complainant's land, exclusive of the improvements, nor the aggregate value and assessment of real estate in the town.

The bridge may have been assessed in a larger proportion to its fair cash value than were a dozen or twenty other parcels of real estate selected, and yet in no larger than that of the aggregate assessment to the aggregate value of such property in the town. Guthrie denies under oath that the alleged statements and exhibits were made to him before the meeting of the town board of review on the fourth Monday in June, 1890, but admits they were then made to that board and afterwards to the supervisors. But if made to him before the assessment was returned, he may for reasons already suggested and possibly others, have differed in opinion from the agent as widely as their figures show in respect to the value of this property. He swears he assessed it at what he believed to be its fair value in comparison with the assessment of other property in the township, and with the aggregate assessment, and though he may have erred in judgment, we see nothing in this averment or the proof relating to it—considered in connection with

the opposing circumstances mentioned—to induce the belief that he acted with a fraudulent purpose.

As to his alleged disregard of the agreement stated of Apl. 30, 1890, the proof is that this property was assessed by the township assessor in 1889 at $115,000, and that the town board of review refused to reduce it, but that the board of supervisors did assume to change it to $75,000, though without any authority so to do, since the assessment was made before the fourth Monday of June. *Coolbaugh* v. *Huck*, 86 Ill., p. 605, and cases cited *supra*. From the action of the town and county officers in 1890, we think the fair inference is that they all understood the agreement of April 30, to refer to the assessment of 1889 as made by the township assessor, and with that understanding Guthrie fully complied by reducing the amount from $115,000 to $95,000.

The good faith of his description of the property assessed as extending "to the state line" instead of the east draw, would seem to be sufficiently shown by the fact that it was the same that was used in each of the years from 1882 to 1888, inclusive. What it was in the assessment of 1889, when objection was first made by the company, does not appear. We, therefore, presume it was still the same. Nor was it shown that Guthrie was asked to change it in 1890. That request was made of the board of supervisors.

There is no evidence in the record tending to show that Guthrie understood or supposed the state line was east of the east end of the draw. The exact location of that line was matter of opinion. It was not distinctly visible, nor were the data from which it was to be ascertained agreed on. Complainant with the same means of knowledge, shows itself uncertain of it by two hundred feet or more,

and is, therefore, hardly in condition to charge that the assessor knew it.

But if it is now ascertained to be in fact east of the draw, then, whether the assessor was or was not honest in assuming it to be where he did, his assessment of what was between that line and the draw was unauthorized, and the collection of the taxes extended thereon should, for that reason, he enjoined.

Where, then, is that line? The Act of Congress of Apl. 18, 1818, to enable the People of the Territory of Illinois to form a state, prescribed for its western boundary a line "along the middle of that river"—the Mississippi—and each of the state constitutions since adopted described it in the same language. It must, therefore, be presumed that the people accepted that boundary as Congress intended it. What, then, did Congress mean by "the middle of the river"?

A river, as defined by Webster, is "a large stream of "water flowing in a channel on land towards the ocean, a "lake, or another river," a definition which makes the the river one stream of water, and consequently the channel one strip of land. This is true of them as to their course in general, and where it is so, the middle of the river would doubtless be the line midway between the water lines at the ordinary stage on the opposite shores. But rivers are in fact, at some points, for short distances, separated into two or more streams, and thence while the river remains one, each stream has its separate channel, for a channel, according to the same lexicographer, is "the bed of a stream."

Now, whatever the rule of municipal law applicable to riparian owners may declare to be the middle of the river

at such points, it seems to be settled by the international rule that as to states having for a common boundary a navigable river, it is not the line midway between the main shores, but a line along the middle of the main one of these channels; and that is held to be the one best adapted and mainly used for navigation—the channel of commerce. It is obvious that no other line as a boundary would certainly secure to either state the right to any valuable use of the river for purposes of commerce, since the channel of commerce would fail to reach it, or would often cross and recross it. Nor would any other channel be a continuous channel. The reasonable presumption is that neither state would intend to concede to the other the exclusive right to use that channel, and upon that presumption the rule is founded, as is agreed by all the writers on international law. Wheaton, Sec. 200; Creasy, Sec. 231; 1 Hallack, Sec. 23, cited by counsel, and *Butternutt* v. *St. Louis Bridge Co.*, 123 Ill., 535, citing further, Field, Polson and Woolsey.

The Mississippi is such a river. At Hamilton, where the bridge crosses it, the continuity of its water surface at the ordinary stage was broken by Island No. 4. That part of the river which flowed between the island and the main shore in Illinois was not navigable for vessels generally at that stage; but that passage was, nevertheless, one of the channels at that point, and the island was within the general bed of the river. According to the showing of the bill, the distance from the main shore in Illinois to the west shore of the island, is 808 feet; from the west shore of the island to the Illinois abutment, 750 feet; thence to the Iowa abutment, 2,192 feet, and thence to the main shore in Iowa, 250, making in all, from main shore to main shore, 4,000 feet. The draw extends from

the Iowa abutment east 380 feet. The assessment to the east end of the draw then included 1,370 feet of the bridge west of the line midway between the main shores, 966 feet west of the line midway between the island and the Iowa shore, and 716 feet west of the line midway between the abutments; and if either of these midway lines is "the middle of the river" in the sense of the enabling act, it included a very considerable portion of the bridge that was in Iowa. No mention is made of a channel of commerce, nor is the bill positive as to which of the last two lines mentioned is the boundary, but avers that complainant believes the assessment included over 900 feet of the bridge in Iowa, and counsel in argument say: "On "the part of appellee it is claimed that the authorities of "Illinois can only tax said bridge to the state line, the "middle of the main river, between the Iowa shore and "the Illinois shore on Island No. 4." This claim seems to concede that the true line is not the middle of the river as a whole. "The main river" is not a strictly accurate expression, since there is only one; and we understand counsel to intend by it the main stream, and by that the one in which the largest of the parts of the river so divided flows, the test of mainness being not depth nor width, but quantity of water of unbroken surface.

If each of the beds in which the several unbroken streams at Hamilton respectively flow is to be regarded as only one channel, then the one between the island and the main shore in Iowa is certainly the main one, and in a general sense each is a channel, for each and the whole of each is the general bed of a stream which is unbroken at its surface, and, therefore, one stream. But a channel, in a more special if not a truer sense, may consist of only a part of such a bed. Webster's definition of it is

"the bed of a stream of water, especially the deeper part "of a river or bay where the main current flows." This distinction between the general bed and the channel is fully recognized by law writers and judges, to some of whom reference has already been made. In Angell on Water Courses, as cited for appellee (Sec. 10, Note 2), it is said that in ascertaining the thread of the river, and thereby the rights of riparian owners, "it will be proper "to take the middle line between the shores upon each "side without regard to the channel or lowest and deepest "part of the stream." See, also, Sec. 101 a. In *Bridge Co.* v. *County of Dubuque*, 55 Iowa, 558, it is said that "the word channel, when employed in treating subjects "connected with the navigation of rivers, indicates the "line of the deep water which vessels follow"; and in *Butternutt* v. *St. Louis Bridge Co.*, 123 Ill., 547-8, our own Supreme court declared this to be "a very accurate "definition of the word 'channel' as commonly used by "rivermen." And Wheaton says (Sec. 202, page 301), "The channel of the Mississippi was remarkably wind-"ing, crossing and recrossing perpetually from one side "to the other of the general bed of the river."

It is shown here that this channel, between Hamilton and Keokuk, was wholly west of the middle line between the main shores or between the island and the Iowa shore; that its west line was about where the pivot pier now stands and its width was about 350 feet, which would place the east end of the draw east of its middle line, and clearly in Illinois, if that line is the boundary. The only change in this channel since the bridge was built is its extension westward to the Iowa abutment, which was made by blasting and removing the rock-bed. No part of the river east of it was ever used as a channel by vessels engaged in the carrying trade.

Thus the line claimed by appellee to be "the middle of "the river," and therefore the boundary of the State of Illinois, would place the whole of the only navigable channel outside of that state and within the coterminous State of Iowa.

It is thought that the history and use of this phrase—"the middle of the Mississippi"—throws some light upon the meaning of Congress by it in the enabling act.

France was the first owner, by appropriation, of the Mississippi and all the territory of its tributaries. By the treaty of Paris of 1763, France ceded to Great Britain all her territory east of that river and north of the Iberville, and the two powers fixed the boundary between them by a line drawn along "the middle of the river Misis-"sippi." Being independent states, to whom the right to use the river for all the purposes of commerce, was of like importance, and which neither would get by the adoption of any other line, the presumption would be according to the authorities cited that they intended the middle line of the channel of commerce. November 30, 1782, Great Britain ceded to the United States all the territory thus acquired north of the thirty-first degree of north latitude, bounded on the west "by a line drawn "along the middle of the Mississippi river," and ratified the cession by the Treaty of Peace of September 30, 1783. This government must be presumed to have known the understanding between Great Britain and France in respect to the boundary, and by the use of the same language to describe it, to have accepted the territory with that understanding. It was also interested, like its grantor, equally with the coterminous state in the navigable use of the river. It must therefore have intended to

obtain, and understood it did obtain, half of the navigable channel without regard to any other middle line.

In 1798 Congress established the Territory of Mississippi, bounding it "on the west of the Mississippi," and in 1817 it was admitted into the Union as a state, with its west boundary "up the Mississippi river:" but Congress did not mean by that language to change the boundary as fixed between France and Great Britain, and between Great Britain and the United States. By "the river," was meant a line along the middle of the river.

Morgan & Harrison v. *Reading*, 3 Sm. and Marshall, 366.

In fixing the eastern boundary of Missouri the enabling act of March 6, 1820, used more definite terms—a line "down and following the course of the Mississippi in the "middle of the main channel thereof." That Congress here meant by "the middle of the main channel thereof," the same thing that it meant by "the middle of the river" is clearly evident from its use of the latter description in the enabling act for Illinois—the eastern boundary of Missouri by one description, and the western boundary of Illinois by the other being for a long distance the same. The east line of Iowa, also a coterminous state, is described like that of Missouri, and the west line of Wisconsin is a line "down the center of the main channel "of that river to the northwest corner of the State of Il- "linois"—which certainly places that corner in the center or middle of the main channel; and the main channel, for all the purposes of this case, was the channel of commerce.

Such appear to be the reasoning and conclusion of the Supreme Court in the Buttenuth case, 123 Ill., 535.

By several early acts of Congress, the equal right of every state of the Union, and of all the people of each to navigate every river within the United States was fully secured. And hence it is said the reason for the rule of international law that makes the line along the middle of the channel of commerce the boundary between independent states does not exist here.

But the claim here made of that line is not upon that reason. It is based upon acts of Congress, ratified by the People of the states concerned. If those acts, properly construed, declare that line to be the boundary, then, whatever may have been the reason for them, they establish it by their own force; and the rule referred to may have decisive effect as a fact in aid of their construction. A boundary line between the lands bordering east and west on the river was established by independent powers that then owned them, and were foreign to each other, before the United States acquired title to any of them. The international rule applied to the powers, and construed their description of that boundary to mean the line so claimed. After the United States, with notice of the line so established, acquired the title, Congress authorized the formation of states out of the lands, with a common boundary line between them, indicated by precisely the same description. From these facts, what other inference should be drawn than that Congress thereby intended precisely the same line. It would be as clearly ascertainable, as fixed, and, on the whole, as fair to the coterminous states as any other that has been suggested, and we see no reason that should have influenced Congress to change it.

We get no light upon this question from any of the decisions of the State or Federal Courts declaring the

boundary of these bordering states to be "the middle of "the river." That is a proposition which all sides alike profess to accept, but with different constructions. Whatever might be our view of it, if it were before us as an original question, we feel bound by those expressed in the Butternutt case, *supra*. Having considered with care all the suggestions of appellee's counsel with reference to its scope and effect as a decision, we cannot but regard it as conclusive upon us.

The evidence in the record fails to show that the middle line of the channel of commerce where the bridge crossed it was east of the east end of the draw.

For the reasons thus stated we are of opinion that the injunction should not have been granted. The order of the Circuit Court granting it will, therefore, be reversed and the cause remanded.

Reversed and remanded.

I, Geo. W. Jones, clerk of said Appellate Court, do hereby certify the foregoing to be a true copy of the opinion of said court in said cause, as the same appears from the records and files in my office.

In testimony whereof, I hereunto set my hand and the seal of said court, at Springfield, this seventh day of December, 1891.

GEO. W. JONES,
Clerk Appellate Court.

Seal of the Appellate Court, Third District. State of Illinois, July 1, 1877.

In the Circuit Court of Hancock County, Illinois.

Keokuk & Hamilton Bridge Company,
Complainants,
vs.
John W. Bertschi, County Treasurer and Ex-Officio Collector of Hancock County, Ill., and William M. Guthrie, Assessor of the Town of Montebello,
Defendants.
} *Affidavit.*

State of Iowa, } ss.
Lee County. }

Albert Wempner, being first duly sworn, doth depose and say that he is a resident of Keokuk, Iowa, and has been engaged as Master and Pilot of steamboats on the Mississippi River most of the time since the year 1852; that he is entirely familiar with the Mississippi River at and near the city of Keokuk, Iowa, and was for many years prior to the building of the Keokuk and Hamilton bridge at that point; that before the building of said bridge the only channel in said river at or near the place crossed by said bridge along which vessels in the carrying trade did or could pass, was near the Iowa shore, the west line of said channel being where the pivot pier of said bridge now stands, and the east line of said channel at a point between three hundred and four hundred feet east of where said pier now stands; that the above described channel was the only channel at this point that could be or was used for the purpose of commerce on said river, the water east of said channel being too shallow in an ordinary

stage of water to be used by vessels engaged in the carrying trade; that the only change in said channel at said point, since said bridge was built, was made by artificial means, by blasting and removing the rock bed of the river and extending said channel westward to the west abutment of said bridge.

In witness whereof I have hereunto set my hand this 25th day of April, A. D. 1891.

ALBERT WEMPNER.

Subscribed and sworn to before me this 25th day of April, A. D. 1891.

ALANSON L. PARSONS,

[L. S.] *Notary Public in and for Lee County, Iowa.*

STATE OF ILLINOIS, } ss.
HANCOCK COUNTY. }

I, Thomas F. Dunn, clerk of the Circuit court within and for said county, in the state aforesaid, do hereby certify that the above and foregoing is a true copy of a certain affidavit made by Albert Wempner in a certain cause pending in said court wherein the Keokuk and Hamilton Bridge Company are complainants and John W. Bertschi, County Treasurer, etc., *et al.*, are defendants, and filed in said cause on May 4, 1891, as the same appears from the files in said cause now in my office remaining.

Witness my hand and the seal of said court at my office In the city of Carthage, in said county this 21st A. D. 1893.

[SEAL.] THOS. F. DUNN,
Clerk.

IN THE SUPREME COURT OF THE UNITED STATES.

The State of Iowa, }
vs.
The State of Illinois. }

STATE OF IOWA, }
COUNTY OF LEE. } ss.

I, James W. Campbell, a licensed pilot, being duly sworn, do depose and and say as follows: I reside at Fort Madison, Iowa, and have resided there since 1863.

I have been familiar with the channel of the Mississippi River at Keokuk, Iowa, since 1831. Seven years of my early life was spent in an Indian canoe paddling up and down the shores at Keokuk during the summer months, and from this association I learned to be a pilot over the Rapids and on the upper Mississippi River, and have followed the said occupation from 1844 to 1871. Immediately above and below where the Keokuk and Hamilton bridge now terminates on the Iowa shore, the channel of the Mississippi river hugs the shore in a curvature line or course, and is from 4 to 600 feet wide. Outside of this distance on the east a boat is liable to strike rocks in several places in low water. I was on the steamer Tempest, and she struck these patches in March, 1847.

The Eliza Steward also grounded upon them in 1847 about 400 feet east of Iowa shore, about one hundred and fifty yards below where the Keokuk and Hamilton bridge now terminates on Iowa shore, and the steamer Dominion sank upon a rock about 600 feet east of Iowa shore near the crossing of the present Keokuk and Hamilton bridge in 1846 or '47. And I am positive there never was a regular or continuous channel, east of line 4 to 600

feet from the Iowa shore at or near where the Keokuk and Hamilton bridge now crosses the river.

J. W. CAMPBELL.

Subscribed and sworn to before me this 19th day of September, A. D. 1893.

[SEAL.] W. C. MARSH,

Notary Public in and for Lee County, Iowa.

IN THE SUPREME COURT OF THE UNITED STATES.

The State of Iowa }
vs. }
The State of Illinois. }

State of Missouri, }
County of St. Louis. } ss.

I, Thomas B. McMath, being duly sworn, do depose and say as follows: I am a resident of the city of St. Louis, Missouri; I am a civil engineer, and have been for the past ten years, and am president of the R. E. McMath Surveying Company of St. Louis, Missouri.

On September 13, 1893, I made soundings of the Mississippi River at the place where the Keokuk and Hamilton bridge crosses that river, in order to ascertain the depth of water therein. These soundings were made and located as follows: Beginning at the west face of the east abutment of the bridge distances of fifty feet were measured along the hand-rail on the north side of the bridge, and from the points so located plumb lines were dropped and the soundings were taken from a boat at the plumb; at the time the soundings were made the water in the river was four-tenths of a foot above low-water mark. The plat annexed hereto was made by me,

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and shows correctly a cross section of the Mississippi River at the Keokuk and Hamilton bridge from the east to the west abutment of said bridge, and the points at which the soundings were made; and the figures in red thereon show the depth of water at the points indicated. The point marked on said plat as "Commissioners mark" is the point at which the commissioners appointed in this suit to fix the boundary line between the states of Iowa and Illinois fixed such boundary line. In making such soundings I was assisted by William H. Glazebrooks and Mark Blackmore.

THOMAS B. MCMATH.

Subscribed and sworn to before me, this 20th day of September, A. D. 1893.

My term expires April 7, 1897.

JOS. A. WHERRY,

Notary Public, City of St. Louis, Missouri.

[SEAL.]

IN THE SUPREME COURT OF THE UNITED STATES.

The State of Iowa
vs.
The State of Illinois.

STATE OF ILLINOIS,
COUNTY OF HANCOCK. } ss.

We, William H. Glazebrook and Mark Blackmore, being severally duly sworn, do depose and say as follows:

On September 13, 1893, we assisted Thomas B. McMath in making soundings of the Mississippi river at the place where the Keokuk and Hamilton bridge crosses that river, in order to ascertain the depth of water therein; the statement contained in the preceding affidavit of Thomas B. McMath in regard to the manner of making such soundings is true, and the statements in said affidavit in regard to the plat annexed to his affidavit are also true.

WILLIAM H. GLAZEBROOK,
MARK BLACKMORE.

Subscribed and sworn to before me, this 22d day of September, A. D. 1893.

R. R. WALLACE.

[SEAL.] *Notary Public in and for County of Hancock. State of Illinois.*

IN THE SUPREME COURT OF THE UNITED STATES.

The State of Iowa
vs.
The State of Illinois.

STATE OF ILLINOIS,
COUNTY OF ADAMS. } ss.

I, H. S. Brown, being duly sworn, do depose and say that I have been engaged in river improvements since 1856; I have examined the bottom of the Mississipp River at the point now spanned by the Keokuk and Hamilton bridge from shore to shore, during extreme low water in the winter season when the almost entire bottom can be seen; that the deepest water was, at that time, at a point about two hundred and fifty feet from the Iowa shore line. Prior to the building of the Keokuk and Hamilton bridge, steamboats passed in or near said water; that portion of the river at said point near the Iowa shore is the only portion of said river which can be used by steamboats in passing up and down, when said river is at a low stage of water. The Hamilton slough was never, in my time, navigable for steamboats except in very high water, and was never used as a channel of the river.

H. S. Brown.

Subscribed and sworn to before me, this 19th day of September, A. D. 1893.

WM. G. FEIGENSPAN,
Notary Public, Adams County, State of Illinois.
[SEAL.]

IN THE SUPREME COURT OF THE UNITED STATES.

The State of Iowa,
vs.
The State of Illinois.

STATE OF IOWA,
COUNTY OF VAN BUREN. } ss.

I, Robert Farris, being duly sworn, do depose and say that I am a resident of Van Buren County, Iowa, and am sixty-six years of age; for thirty-seven years I was engaged in the business of a pilot on the Mississippi river, and was most of that time engaged in piloting steamboats over the Des Moines Rapids from Montrose, Iowa, to Keokuk, Iowa; during the time the Keokuk and Hamilton bridge was building, and for many years prior to that time, I was constantly engaged in piloting steamboats from Montrose to Keokuk, passing that part of the river now spanned by the Keokuk and Hamilton bridge almost daily during the boating season; I am familiar with the Mississippi river at this point, and have been for the past thirty-seven years, and before the Keokuk and Hamilton bridge was built, the navigable channel originally used, and along which vessels in the carrying trade passed, was near the Iowa shore; the west line of said channel was where the pivot pier of said bridge now stands, and the east line at a point not exceeding four hundred feet east of where said pivot pier now stands; the above described channel was the only channel in said river at this place where vessels engaged in the carrying trade could pass.

ROBT. FARRIS.

Subscribed and sworn to by Robert Farris, before me, this 20th day of September, A. D. 1893.

[SEAL.] W. D. MCCORMICK,
Notary Public in and for Van Buren County, Iowa.

IN THE SUPREME COURT OF THE UNITED STATES.

The State of Iowa
vs.
The State of Illinois.

STATE OF IOWA,
COUNTY OF LEE. } ss.

I, R. S. Owen, being duly sworn, do depose and say that I am a resident of Lee county, Iowa, and am sixty years of age; that for thirty-nine years I was engaged in the business of a pilot on the Mississippi River, and was most of that time engaged in piloting steamboats over the DesMoines Rapids, from Montrose, Iowa, to Keokuk, Iowa; during the time the Keokuk and Hamilton bridge was building, and for many years prior to that time, I was constantly engaged in piloting steamboats from Montrose to Keokuk, passing that part of the river now spanned by the Keokuk and Hamilton bridge constantly during the boating season; I am familiar with the Mississippi River at this point, and have been for the past thirty-nine years and before the Keokuk and Hamilton bridge was built, the navigable channel originally used and along which vessels in the carrying trade passed was near the Iowa shore; the west line of said channel was where the pivot pier of said bridge now stands, and the east line at a point not exceeding four hundred feet east of where said pivot pier now stands; the above described channel was the only channel in said river at this place where vessels engaged in the carrying trade could pass.

R. S. OWEN.

Subscribed and sworn to before me, this 19th day of September, A. D. 1893.

WASHINGTON GALLAND,
[SEAL.] *Notary Public for Lee County, Iowa.*

IN THE SUPREME COURT OF THE UNITED STATES.

The State of Iowa,
vs.
The State of Illinois.

STATE OF ILLINOIS,
COUNTY OF HANCOCK. } ss.

I, George C. Waggonner, being duly sworn, do depose and say that I am fifty-four years of age, a resident of Hancock county, Illinois, and by profession a pilot. For thirty-two years last past I have been engaged in piloting steamboats on the Mississippi River between St. Louis and St. Paul, except the years 1861 to 1865, while serving in the United States Navy on the lower Mississippi. During my thirty-two years service as pilot I have frequently —nearly every season—navigated boats on the Mississippi River at Keokuk, Iowa, at the point now spanned by the Keokuk and Hamilton bridge, and I am entirely familiar with the Mississippi River at said point, and have been for the thirty-two years last past. Prior to the building of the bridge across the Mississippi River between Hamilton, Illinois, and Keokuk, Iowa, the navigable channel of said river at and near that point, which vessels followed in passing up and down the river was a space commencing where the pivot pier now stands and extending eastward not more than three hundred feet; within that space the boats and other vessels going up and down passed, and such space was and still is the main channel of said river, and the only channel along which vessels engaged in the carrying trade could or do pass; the portion of said river east of said main channel, was and still is shallow, except in certain seasons of high water, and was never capable of being used for general purposes of navigation.

I am familiar with Hamilton Slough, and have been for the thirty-two years last past; said Slough is not navigable and has not been during that time, except in extreme high water; before the railroad bridge was built across said Slough it was wholly impassable at a low stage of water for steamboats of ordinary draft, and at the present time at a low stage of water there is no running water in said Slough.

On September 4, 1893, I had a conversation with Albert Wempner, one of the commissioners appointed by this court to fix the boundary line, and he told me that in fixing the boundary he did not consider that the channel used by boats had anything to do with the matter.

GEORGE C. WAGGONNER,
Licensed Master and Pilot.

Subscribed and sworn to before me, this eighteenth day of September, A. D. 1893.

[SEAL.] R. R. WALLACE,
Notary Public in and for County of Hancock State of Illinois.

Brief & Arg. [illegible]

Brief of Moloney for [illegible]

FILED
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[illegible]

Filed October, 1893.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1893.

THE STATE OF IOWA
vs.
THE STATE OF ILLINOIS.

ORIGINAL SUIT.
IN EQUITY.

BRIEF OF THE STATE OF ILLINOIS ON MOTION TO SET ASIDE ORDER CONFIRMING COMMISSIONERS' REPORT.

M. T. MOLONEY,
Attorney General of the State of Illinois.

A. W. GREELEY,
HERRICK & ROBBINS,
Of Counsel.

[illegible]

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1893.

THE STATE OF IOWA		ORIGINAL SUIT.
vs.		
THE STATE OF ILLINOIS.		IN EQUITY.

BRIEF OF THE STATE OF ILLINOIS ON MOTION TO SET ASIDE ORDER CONFIRMING COMMISSIONERS' REPORT.

This is an original suit in equity instituted in this court to determine the boundary line between the states of Iowa and Illinois. This Court decided that the boundary line was the middle of the main navigable channel of the Mississippi River. Commissioners were appointed to mark this boundary line. At the last term of this Court a report was filed by the commissioners, in which they reported that they had fixed the boundary line on the Keokuk and Hamilton bridge at Keokuk, Iowa, and found the same to be at a point which they marked upon a plat accompanying the report. The report was confirmed by this Court upon the application of the State of Iowa; but no

notice was given by the State of Iowa to the State of Illinois of the application to confirm this report. The State of Illinois now comes and moves the Court to set aside this order of confirmation.

In order to determine whether this motion is well founded, it will be necessary to make a short statement of the record in this case, and also of the contents of the papers on which the motion is based.

The original bill filed by the State of Iowa alleges that the State of Illinois and its several municipalities bordering on the Mississippi River in assessing the bridges crossing the river, claim that the boundary line is "the middle of the steamboat channel or channel of said river usually traversed by steam or other crafts in carrying the commerce of said river, regardless of whether said channel is east or west of the middle of the main bed or arm of said river;" that the State of Iowa claims that the said boundary line is the middle of the main-arm or bed of the river, from shore to shore. The bridge to which particular reference is made in the bill is the bridge of the Keokuk and Hamilton Bridge Company across said river from Keokuk, Iowa, to Hamilton, Illinois; and the bill alleges that the middle of the steamboat channel would be, were it not for the bridge, and was before said bridge was located, 300 feet east of the east end of the draw in said bridge, or 880 feet from the Iowa shore of said river and 2162 feet from the shore of said river in Illinois on Island Number Four; that the authorities in Illinois assess and tax as in Illinois this bridge from the west shore of said island to the east end of the draw and to a point 941 feet west of the middle of the main bed of said river at that point, while the State of Iowa taxes said bridge to the middle thereof between the east and west abutments,

thereby treating for convenience of taxation the middle of said bridge between abutments as the middle of said river at that point, but really 225 feet less than one-half of the distance across the main arm or bed of said river at that point.

The answer of the State of Illinois denies that the boundary line between the two states is the middle of the bed of said river, but insists that it is the middle of the steamboat channel, the channel most commonly used by boats in carrying the commerce of said river; and admits that the State of Illinois, and the municipalities in that state, claim the right to and do tax the bridges and other structures in said river to the middle of such steamboat channel or channel of commerce, and do assess the Keokuk and Hamilton bridge to the draw, and considerably west of the middle of the main arm or bed of said river.

A cross-bill was also filed by the State of Illinois in which the same claim as to the boundary line is made, as is made in the answer, and also alleging that there are nine bridges across said river between the said states, and asks to have the boundary line fixed at each of these bridges.

An answer was filed to the cross-bill which makes substantially the same issue as is made by the original bill and answer thereto.

It is alleged, both in the original bill and in the cross-bill, that litigation is pending over the taxation of the Keokuk and Hamilton bridge.

The question, therefore, submitted to this Court for its decision was whether the boundary line between these two states is the middle of the main body of water measuring from shore to shore, or whether it is the middle of

the main navigable channel, which is the channel of commerce usually followed by vessels engaged in the carrying trade.

This Court, after stating the pleadings, says:

"When a navigable river constitutes the boundary between two independent states, the line defining the point at which the jurisdiction of the two separates is well established to be the middle of the main channel of the stream. The interest of each state in the navigation of the river admits of no other line. The preservation by each of its equal right in the navigation of the stream is the subject of paramount interest."

The Court quotes from writers on International Law upon the subject of the boundary line between adjoining states, and then says:

"The middle of the channel of a navigable river between independent states is taken as the true boundary line from the obvious reason that *the right of navigation* is presumed to be common to both, in the absence of a special convention between the neighboring states, or long use of a different line equivalent to such a convention. * * * The reason and necessity of the rule of international law as to the mid-channel being the true boundary line of a navigable river, separating independent states, may not be as cogent in this country where neighboring states are under the same general government, as in Europe, yet the same rule will be held to obtain unless changed by statute or usage of so great a length of time as to have acquired the force of law."

This court also points out that this boundary line was first established at the time that independent governments owned on either shore of the Mississippi River.

Two decisions of state courts are referred to in the opinion; one decision was by the Supreme court of Iowa in *Dunleith and Dubuque Bridge Company* v. *The County of Dubuque*, 55 Iowa, 558, which held that the boundary line between these two states was middle of the bed of

the river, over which the water flows from bank to bank; the other decision referred to was by the Supreme court of Illinois in *Buttenuth* v. *St. Louis Bridge Company*, 123 Ill., 535, wherein that court, in defining the middle of the Mississippi river, observes: that the word "channel" is used as indicating "the space within which ships can and "usually do pass," and holds that it is in this sense the expressions "middle of the river," "middle of the main "channel," "mid-channel," "middle thread of the chan- "nel," are used in enabling acts of Congress and in state constitutions establishing state boundaries, on the ground that it is the free navigation of the river—when such river constitutes a common boundary, that part on which boats can and do pass, sometimes called "nature's pathway,"—that States demand shall be secured to them.

These two decisions, therefore, presented quite clearly the question to be determined by this court; the Supreme Court of Iowa deciding that the channel of navigation had no bearing upon the matter, but that the boundary line must be fixed, irrespective of any question of the navigable channel, at a point midway between the two shores; while the Supreme Court of Illinois decided that the navigable channel or channel of commerce was all important in the matter, and that the boundary line must be fixed at the middle of such channel of commerce, on the ground that in that way only could be preserved to each state equality in the right of navigation of the river.

This Court then says:

"The opinions in both these cases are able, and present in the strongest terms the different views as to the line of jurisdiction between neighboring states separated by a navigable stream; but we are of opinion that the controlling consideration in this matter is *that which preserves to each state equality in the right of navigation in the*

river. We, therefore, hold, in accordance with this view, that the true line in navigable rivers between the states of the union which separates the jurisdiction of one from another is the middle of the main channel of the river. Thus the jurisdiction of each state exists to the thread of the stream—that is, to the 'mid-channel,' and if there be several channels, to the middle of the principal one, or, *rather, the one usually followed.*

"It is therefore ordered, adjudged and declared that the boundary line between the State of Iowa and the State of Illinois is the middle of the main navigable channel of the Mississippi river."

On January 3, 1893, an interlocutory decree was entered wherein it is "ordered, adjudged and declared by "this court that the boundary line between the State of "Iowa and the State of Illinois is *the middle of the* "*main navigable channel* of the Mississippi River at the "places where the nine bridges mentioned in the plead- "ings cross said river; and it is further ordered that a "commission be appointed to ascertain and designate at "said places the boundary line between the two states, "such commission consisting of three competent persons, "to be named by the court upon the suggestion of coun- "sel, and be required to make a proper examination, and "to delineate upon maps prepared for that purpose the "true line as determined by this Court, and report the "same to the Court for its further action."

On March 6, 1893, a joint request was filed in this court dated January 19, 1893, signed by the Attorney General of the State of Iowa, and the Attorney General of the State of Illinois, requesting the appointment of commissioners to fix the boundary line on the Keokuk and Hamilton bridge, and on the next day an order was entered in accordance with this request, which order also provided that the commissioners should mark the

boundary line at the other eight bridges when requested by either party. These commissioners filed their report in this Court on March 30, 1893, fixing the boundary line at the Keokuk and Hamilton bridge; and on the same day the State of Iowa moved for an order confirming the report. No notice was given to the State of Illinois, by the State of Iowa, that the report had been filed or that any application would be made to confirm any report. On April 10, 1893, an order was entered by this Court which recites that application had been made by the State of Iowa for an order confirming the report and ordering that the report be confirmed; and further ordering that the commissioners proceed to determine and mark the boundary line between said States throughout its extent and report.

The report itself says nothing about the main navigable channel of the river and gives no facts from which can be ascertained the manner in which the boundary line was fixed; it simply finds the boundary line to be 1,041.65 feet east of the center of the draw span of the bridge. It appears, however, from the plat submitted with the report that the commissioners fixed the east bank of the river and the west bank of the river, and then fixed the boundary line midway between these two points irrespective of the location of the main navigable channel. The plat, however, does show the steamboat channel, which is substantially the same thing as the channel of commerce, and it is the channel of commerce because it is and always has been the main, and, in fact, the only navigable channel, usually followed by vessels engaged in the carrying trade.

The petition of the State of Illinois filed with this motion claims that the main navigable channel of the Mis-

sissippi River is near the Iowa shore; that the west line of such channel is near where the pivot pier of said Keokuk and Hamilton bridge now stands and that the said channel extends eastward a distance of about four hundred feet; that the middle of that channel under the decision of this Court is the boundary line between the two states; that this line is at least eight hundred feet west of the line fixed by the said commissioners; that at the point fixed by said commissioners the river is not navigable and never has been navigable in the ordinary stage of water for vessels engaged in the carrying trade upon said river, nor in fact has the portion of said river east of this navigable channel been used by vessels for the purposes of navigation.

The affidavits filed with the petition fully sustain this claim. It appears from these affidavits that prior to the building of the Keokuk and Hamilton bridge the navigable channel of the river at this point extended from a point near the Iowa shore a distance of from four to six hundred feet east; that blasting of rock in or near the channel and the building of the bridge has somewhat changed the location of the channel, but that east of a point six hundred feet east of the Iowa shore the river is not and never has been, at an ordinary stage of water, navigable, nor has any part of it ever been used as a channel by vessels engaged in the carrying trade.

McMath, one of the affiants, has recently made soundings of the river from shore to shore, and has attached to his affidavit a plat showing those soundings; this plat shows that the point fixed by the commissioners as the boundary line between the states is in about the shallowest part of the river—a portion of the river that could not, at an ordinary stage of water be used for the purposes of navigation, even if there were no bridge at that point.

It appears quite clearly from this plat that the deep water of the river is near the Iowa shore. In fact it seems hardly necessary to spend much time over these affidavits, because it is admitted by the original bill in this case that the channel of commerce, the navigable channel usually followed by vessels engaged in the carrying trade, is near the Iowa shore.

The affidavit of J. L. Miller shows that this suit is the continuation or rather the culmination of litigation that has been going on for some years in the State of Illinois between the Keokuk and Hamilton Bridge Company and the State of Illinois and its several municipalities interested in the taxation of the property of the Bridge Company. For some years the Bridge Company has been contesting the amount of taxes levied upon its property in the State of Illinois; one of the points made by the Bridge Company has been that more of the bridge was assessed in Illinois than was actually situated in that state, and the contention of the Bridge Company on this point has been the same as the contention of the State of Iowa in this case, that the boundary line is the middle of the body of the river measuring from shore to shore. Where this bridge crosses the river, the continuity of the surface of the river is broken by Island No. 4, which is near the Illinois main shore, and separated from it by what is called Hamilton Slough. We think it was originally claimed by the Bridge Company that the boundary line should be ascertained by measuring from main shore to main shore. In this case it seems to have been contended by the State of Iowa that the boundary line was to be ascertained by measuring from the west shore of Island No. 4 to the Iowa main shore. The principle, however, is the same in both cases, or, perhaps, we should rather

say, that both of these contentions are opposed to the contention of the State of Illinois that the boundary line is the middle of the main navigable channel.

In 1891 a suit was commenced by the Keokuk and Hamilton Bridge Company against the Collector of Hancock county, Illinois, and the Township Assessor of Montebello Township, asking for an injunction to restrain the collection of the taxes of 1890 levied upon the property of the Bridge Company, and the main issue involved in that case was the location of the boundary line between the two states, the municipal authorities claiming that the boundary line was at the east end of the draw of the bridge, because that was the middle of the main navigable channel, and the bridge company claiming that the boundary line was several hundred feet west of that point, because the boundary line was the middle of the river from shore to shore.

The Circuit Judge allowed the injunction, but upon appeal, this order was reversed, and the Appellate Court, in an opinion, a certified copy of which is included among the papers on this motion, held that the boundary line was at the middle of the channel of commerce, and that the record did not show that the middle line of the channel of commerce where the bridge crosses was east of the east end of the draw.

The court says in regard to the channel:

In *Bridge Co.* v. *County of Dubuque*, 55 Iowa, 558, it is said that "the word channel, when employed in treating subjects connected with the navigation of rivers, indicates the line of the deep water which vessels follow"; and in *Buttenutt* v. *St. Louis Bridge Co.*, 123 Ill., 547–8, our own Supreme Court declared this to be "a very accurate definition of the word 'channel,' as commonly used by river men." And Wheaton says (Sec. 202, p. 301):

"The channel of the Mississippi was remarkably winding, crossing and recrossing perpetually from one side to the other of the general bed of the river."

It is known here that this channel, between Hamilton and Keokuk, was wholly west of the middle line between the main shores, or between the island and the Iowa shore; that its west line was about where the pivot pier now stands, and its width was about 350 feet, which would place the east end of the draw east of its middle line, and clearly in Illinois, if that line is the boundary. The only change in this channel since the bridge was built is its extension westward to the Iowa abutment, which was made by blasting and removing the rock bed. No part of the river east of it was ever used as a channel by vessels engaged in the carrying trade.

Thus the line claimed by appellee to be "the middle "of the river," and therefore the boundary of the state of Illinois, would place the whole of the only navigable channel outside of that state and within the coterminous state of Iowa.

After this decision was rendered, this suit was instituted in this Court, and it appears from the affidavits that it has been carried on largely by and at the expense of the Bridge Company. The decision of this Court was against the contention always made by the Bridge Company, and in favor of the contention made by the State of Illinois, and made by the several municipalities of Illinois in their previous litigation with the Bridge Company. After the decision was rendered and the interlocutory decree entered, the joint request for the appointment of commissioners was made. It appears from the petition of the State of Illinois that this joint request was presented to the Attorney General of Illinois for his signature, by Mr. George Edmonds, who in all the previous litigation had been the attorney for the Bridge Company, and it also appears from the affidavits that the expenses of these commissioners have been paid by the Bridge

Company. They made their report fixing the boundary line at this bridge, but in this report no attempt is made to locate the main navigable channel of the river, nor are any facts stated in the report from which this Court could determine whether or not the commissioners had correctly fixed the boundary line. They simply state baldly, that they have surveyed and fixed the boundary line between Iowa and Illinois, on the Keokuk and Hamilton bridge, and that they find said boundary line is situated one thousand and forty-one and sixty-five hundredths feet east of the center of the draw span. Their plat, however, shows that they knew where the main navigable channel usually followed by steamboats in the carrying trade was located, because on the plat they have marked the steamboat channel.

They have marked on the plat at the place where they have located the boundary line, the word " mid-channel," but it is quite clear that it is so located, not because it is the middle line of any actual channel, but because the commissioners determined that the mid-channel was the line midway between the east and west shores of the river. This is further shown by the affidavits filed with the petition. The affidavit of Miller shows that he had a conversation with John R. Carpenter, one of the commissioners, in which Carpenter stated that, under the decision of this Court, the middle of the navigable channel was not the boundary line, and that while the commissioners could not be very certain what the Court meant by its decision, the commissioners decided that the boundary line should be the middle of the main arm of the river, without any reference to the portion thereof that was used as the channel of navigation.

The affidavit of Waggoner shows that he was told by

Albert Wempner, another of the commissioners, that in fixing the boundary he did not consider that the channel used by boats had anything to do with the matter. It is a curious fact that this same Albert Wempner made an affidavit in the state court in the litigation to which we have referred, in which he stated that before the building of the Keokuk and Hamilton Bridge the only channel in said river at or near the place crossed by said bridge along which vessels in the carrying trade did or could pass was near the Iowa shore, the west line of said channel being where the pivot pier of said bridge now stands, and the east line of said channel at a point between three and four hundred feet east of where said pier now stands; that the above described channel was the only channel at this point that could be or was used for the purpose of commerce in said river, the water east of said channel being too shallow in an ordinary stage of water to be used by vessels engaged in the carrying trade. A certified copy of this affidavit is among the motion papers.

It is quite clear that these commissioners either did not read the decision of this court or the interlocutory decree, or wilfully disregarded them. They were directed to fix the boundary line in the middle of the main navigable channel; their first duty would have been to have located the main navigable channel, and then have fixed the boundary line at the middle thereof. Instead of doing that, they located the east and west shore of the river and fixed the boundary line midway between the two shores, entirely disregarding the decision of the Court which fixes the line at the middle of the main navigable channel in such a way as to preserve to each state the right of navigation in the river.

This report was presented to this Court and applica-

tion was made by the State of Iowa for its confirmation. No notice was ever given to the State of Illinois that any such application would be made, or that the commissioners had made any report. An order was entered confirming such report. The petition of the State of Illinois shows that no notice was given of any application for such an order, and in fact not until after the final adjournment of this Court at its last term did the Attorney General of the State of Illinois learn that a report had been made by said commissioners, and that said report had been confirmed.

This report is not in accordance with the decision of this Court or the interlocutory decree. The commissioners did not fix the boundary line at the Keokuk and Hamilton bridge, in accordance with the directions of this Court. If this were the only point in the river at which the commissioners were to fix the boundary line, the report should be set aside because it is contrary to the decision of this Court.

The order of March 7, 1893, provided that the boundary line at the Keokuk and Hamilton bridge should be fixed and report made, and that afterward the commissioners determine and mark the said state line at the other eight bridges when requested by either party and report the same.

The order entered April 10, 1893, modified the former order. After confirming the report of the commissioners fixing the boundary line at a single point, namely, where the Keokuk and Hamilton bridge crosses the river, the order provides that the commissioners should proceed to determine and mark the boundary line between said states throughout its extent and report thereon to this Court with all convenient speed, and that the order entered

herein on March 7, 1893, be modified in accordance therewith. That order, of course, is interlocutory. It may be modified or entirely set aside, as the Court may see fit. If, however, it is allowed to stand, then the commissioners will proceed to mark the boundary line throughout its entire extent in the same erroneous manner. In the end this Court will be called upon to enter a final decree determining just where the boundary line is, and if such final decree were based upon the report under consideration, and another report locating the boundary line in the same erroneous manner, the final decree of this Court would be inconsistent with its opinion filed in this case and its interlocutory decree.

We do not expect the Court upon this application to determine the exact location of the main navigable channel. It is sufficient to say that the boundary line at the place where the Keokuk and Hamilton bridge crosses the Mississippi river as fixed by the commissioners in their report is not in the middle of the main navigable channel, and therefore does not correctly fix the boundary line at that place. It follows that it should be set aside.

The petition of the State of Illinois prays that either new commissioners be appointed or that this cause be referred to some Circuit court of the United States or a master in chancery thereof, to take proof in regard to the main navigable channel of the Mississippi river and the middle line thereof, and report the same to this court. It seems to us that the latter course is preferable. The facts upon which the tribunal to whom is referred the ascertainment of the boundary line bases its decision, should be preserved and returned in some form to this Court, in order that this Court may test the propriety of such decision. Especially is this true in a matter of so

great importance as the fixing of the boundary line between two states of the Union, which the final decree of this Court will settle forever.

Respectfully submitted.

M. T. MOLONEY,
Attorney General of the State of Illinois.

A. W. GREEN,
HENRY S. ROBBINS,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1908.

THE STATE OF IOWA,
Complainant,
vs.
THE STATE OF ILLINOIS,
Defendant.

No. 11, Original.

Reply of the State of Illinois on Motion to Set Aside Order Confirming Commissioner's Report.

M. F. MCCLOSKEY,
Attorney General of the State of Illinois.

A. W. Orendorff,
Perley B. Robertson,
Of Counsel.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1893.

THE STATE OF IOWA *vs.* THE STATE OF ILLINOIS.	ORIGINAL SUIT IN EQUITY. No. 5.

Reply of the State of Illinois on Motion to set aside Order Confirming Commissioners' Report.

I.

THE ORDER OF APRIL 10, 1893, CONFIRMING THE COMMISSIONERS' REPORT IS NOT A FINAL ORDER.

The order entered herein on the 10th day of April, 1893, confirmed the commissioners' report marking the boundary line between the States of Illinois and Iowa at the Keokuk and Hamilton Bridge, and ordered the commissioners to proceed to determine and mark the boundary line between said states throughout its extent, and report to this Court.

It is contended on behalf of the State of Iowa that this order is a final judgment, and that, therefore, this

Court has no power to change, alter or modify the same after the final adjournment of the Court at the term at which said judgment or decree was entered. Let us see if this position is correct. The object of this suit is to obtain a final decree from this Court locating the boundary line between the States of Illinois and Iowa. An interlocutory decree was entered on January 3, 1893, wherein it was ordered, adjudged and declared by this Court that the boundary line between the State of Iowa and the State of Illinois is the middle of the main navigable channel of the Mississippi River at the places where the nine bridges mentioned in the pleadings cross said river. And it was further ordered that a commission be appointed to ascertain and designate at such places the boundary line between the two states, such commission consisting of three competent persons to be named by the Court upon the suggestion of counsel and be required to make a proper examination and to delineate on maps prepared for that purpose the true line as determined by this Court and report the same to the Court for its further action.

On March 6, 1893, there was filed in this Court a joint request for the appointment of commissioners wherein the names of the commissioners were suggested and a request that the commissioners be directed at once to fix the boundary line on the Keokuk and Hamilton bridge, and an order was entered upon this joint request appointing the commissioners and ordering them to locate and mark the state line between the two states pursuant to the opinion of the Court at each of the nine bridges across the Mississippi River between these states, and in view of the emergency alleged to exist ordering the commissioners to proceed at once to ascertain and mark the

boundary line between the states at the Keokuk and Hamilton bridge, and to report at once their action in that regard before proceeding to ascertain the line or mark the same at the other bridges, and that afterwards they determine and mark the said state line at the other eight bridges when requested by either party, and report the same. The report of the commissioners marking the boundary line at the Keokuk and Hamilton bridge was filed on March 30, 1893, and a motion made by the State of Iowa for an order confirming the same. If a decree had been entered upon that report confirming it and also in terms fixing the boundary line between the two states where the Keokuk and Hamilton bridge crosses the river, there would at least have been some reason in claiming that such an order would have been in the nature of a final order. Such an order even if final, however, could have been set aside by this Court at a subsequent term, if its entry was procured by fraud or imposition.

This Court doubtless saw that if such an order were entered, it would lead to this result:—that as there were nine bridges there might be nine different decrees in this case. The Court therefore while confirming the report did not enter any decree which by its terms fixed the boundary line at this point, but directed the commissioners to proceed to determine and mark the boundary line between the states throughout its extent.

The order is as follows:

"SUPREME COURT OF THE UNITED STATES,

NO. 5, ORIGINAL, OCTOBER TERM, 1892.

The State of Iowa, Complainant,
vs.
The State of Illinois.

This cause coming on to be heard upon the application of the State of Iowa for an order confirming the report of the commissioners, presented herein, ascertaining and marking the boundary line between the State of Illinois and the State of Iowa, at the Keokuk and Hamilton Bridge, at Keokuk, Iowa, it is ordered that the said report be, and the same is hereby, confirmed; and it is further ordered that said commissioners proceed to determine and mark the boundary line between said states throughout its extent, and report thereon to this Court, with all convenient speed, and that the order herein entered on March 7, 1893, be, and it is hereby modified in accordance herewith.

April 10, 1893."

This order has none of the elements of a final decree. It does not purport to adjudge or decree where the boundary line is at the point where the Keokuk and Hamilton bridge crosses the river. It simply confirms the partial report made by the commissioners and directs them to proceed to complete their work.

The previous order required the commissioners to fix the boundary line at this particular point, and make their report, and then to wait before further proceeding until requested by either party. This order of April 10th. requires the commissioners to proceed to mark the boundary line throughout its extent in accordance with the prayer of the bill. It evidently contemplates that when the final report of the commissioners comes before the Court it will be considered, and if confirmed, then a de-

cree will be rendered which shall by its terms fix the boundary line between the states throughout its extent.

It is not the report of the commissioners which finally adjudges where the boundary line shall be. It is the decree of the Court which is to fix the boundary line, and wherein the boundary line must be definitely stated. A decree to be final must by its terms adjudicate the rights of the parties.

The case of *Central Trust Company* v. *Grant Locomotive Works*, 135 U. S., 207, is cited by counsel on this point. The orders held to be final orders in that case are found at pages 210, *et seq*. As said in the opinion of the Court, they were made upon matters distinct from the general subject of the litigation. They determined by their terms the ownership to certain locomotives and the right to their possession and completely adjudicated the rights of the parties to the subject-matter of the petitions upon which they were entered.

In *Fosdick* v. *Schall*, 99 U. S., 235, there was a decree upon an intervening petition. The decree in terms settled the rights of the parties.

In *Trustees* v. *Greenough*, 105 U. S, 527, there was a reference to a master upon a matter incidental to the cause, the inquiry being a collateral one. Evidence was taken before the master, and a report was made by the master. The final order confirmed the report in part and disallowed it in part, and the order itself fixed in terms the amount allowed. The court of course held that this was:

"A final determination of the particular matter arising upon the complainant's petition for allowances, and directs the payment of money out of the fund in the hands of the receiver. Though incidental to the cause, the inquiry was a collateral one, having a distinct and independent character, and received a final decision."

In *Williams* v. *Morgan*, 111 U. S., 684, there was a decree fixing the compensation to be paid to the trustees under the mortgage from the fund realized from the sale. This Court says (page 699):

"That the order was such as could be appealed from, we think is equally apparent. It was final in its nature and was made in a matter distinct from the general subject of litigation—a matter by itself, which affected only the parties to the particular controversy, and those whom they represented."

In each of those cases, the order under consideration differs from the order under consideration in this case in two particulars: 1st. Each relates to a matter distinct from the general subject of litigation. 2d. Each of the orders is complete in itself, and by its terms adjudicates the rights of the parties to the order, and is in form a final decree.

The order under consideration in this case relates to the general subject of the litigation, and does not purport finally to adjudicate on that subject. It does not purport to fix the boundary line at any point; it merely confirms a partial report of the commissioners and directs them to proceed to mark the boundary line through its extent. It has none of the elements of a final decree. We are willing to have this order tested by the definition of a final decree cited by counsel from the case of *Beebe* v. *Russell*, 19 How., 285.

"When a decree finally decides and disposes of the whole merits of the cause and reserves no further questions or directions for the future judgment of the court, so that it will not be necessary to bring the cause again before the court for its final decision, it is a final decree."

If this order had been entered in a circuit court, it seems to us quite clear that it would not have been ap-

pealable, because it was not a final order. In fact, if the order had simply confirmed the report of the commissioners, and had not gone on and directed the commissioners to proceed further, still it would not have been a final order any more than the confirmation of the report of a master in chancery upon a partnership accounting would be a final order. The Court must go on and by its decree determine the matter in controversy.

In *Kingsbury* v. *Kingsbury*, 20 Mich., 212, upon a bill for a partnership accounting, it was referred to a special commissioner to take an account, who made his report, to which exceptions were taken by the complainant. All of the exceptions were disallowed, and the report of the commissioner was confirmed. Thereupon the complainant appealed to the Supreme Court, and defendant moved to dismiss the appeal on the ground that the order confirming the commissioner's report was not a final decree or order. The court says (page 214):

"But a mere confirmation of the report is not a final decision of the cause. The case must, after such confirmation, be brought on to be heard, and upon the final hearing, if the facts are sufficiently presented to make a decree, the court will then proceed to adjudicate and direct what remedy is to be had against either party and give its decree in such a shape that it can be enforced. The present order contains no such feature. * * * A confirmed report at best stands in the same relation to decree as a verdict to a judgment. It may be almost certain that the decree will follow it, but it cannot be enforced until the decree is entered."

And the court held that the order in question, not being a final decree, was not appealable.

In *Adkisson* v. *Dent*, 88 Ky., 628, it was claimed that an order confirming the report of a commissioner after the term at which it was confirmed, was final. The

court held that it was not final, and might be disregarded by the court when it came to render final judgment, though at a subsequent term. The court says (page 630):

"The court, when there are no reasons shown to the contrary, may, in advance of the final judgment, confirm the report; but this is upon the idea that, as the parties interested have filed no exceptions suggesting inaccuracies, the report is probably correct. But the report possesses no elements of a judgment, and its confirmation does not impart to it the properties of a judgment."

We have been unable to find any case in this Court which upon its facts is like the case at bar, but we refer to the following cases wherein decrees were held not to be final decrees:

Rail Road Co. v. *Swasey*, 23 Wall., 405.
Parsons v. *Robinson*, 122 U. S., 112.
Burlington C. R. & N. Ry. Co. v. *Simmons*, 123 U. S., 52.

We respectfully submit that the order of April 10, 1893, which merely confirmed the partial report of the commissioners, and directed them to proceed to complete their work is not a final order, and that this Court has complete jurisdiction to alter, modify or set it aside as justice shall require.

II.

THE ORDER OF APRIL 10, 1893, WAS NOT ENTERED UPON NOTICE TO THE STATE OF ILLINOIS, NOR DID THE STATE OF ILLINOIS EVER CONSENT TO THE ENTRY THEREOF.

It is claimed that the order of April 10, 1893 was entered upon notice to and agreement by the State of Illinois. This claim is based upon the affidavit of Walter I.

Hayes filed on behalf of the State of Iowa. In that affidavit, Hayes says that he received a telegram from M. T. Maloney, Attorney General of the State of Illinois, which is as follows:

WESTERN UNION TELEGRAPH COMPANY.

* * * * *

Number 47 nv. Sent by tz. Recd. by Bn. 35 pd.
Received at Corcoran Bldg., S. E. cor. 15th & F. Sts., Washington, D. C., Mar. 26, 1893, dated Springfield, Ill., 26.

To Walter I. Hays, Cr. J. H. Cole, Washn.

You are authorized to appear in Sup. court of U. S., in case of Iowa v. Illinois, and consent to the confirmation of the report of commissioner as to line at Keokuk and Hamilton Bridge.

M. T. MALONEY.

In the petition filed by the State of Illinois, which is signed by Attorney General Moloney of that State, it is alleged "that no notice was ever given to its Attorney General or in any way to the State of Illinois that the said commissioners had made their said report or that an application would be made to this court to confirm any report of said commissioners; that not until after the final adjournment of this court at its last term did the Attorney General of the State learn that a report had been made by the said commissioners, and that said report had been confirmed."

In view of this allegation it need hardly be said that the telegram attached to the affidavit of Hayes was a surprise to the counsel for the State of Illinois. An examination of the affidavit in connection with the record in this cause changed that surprise to suspicion.

The telegram is dated March 26, 1893, which was Sunday, and is sent to Hayes, care of J. H. Cole, Washington.

It is not explained how the Attorney General of Illinois came to send such a telegram. It is not claimed that it was sent in response to any communication from counsel for the State of Iowa, or from anybody else. It is not claimed that any notice was served upon the State of Illinois or its Attorney General, that the commissioners had made their report and that an application would be made to confirm such report, or that on the 26th of March, 1893, the Attorney General of Illinois knew anything about it. On these points the affidavits filed on behalf of the State of Iowa are absolutely silent. Yet the claim is made that on Sunday, March 26, 1893, the Attorney General of Illinois of his own motion telegraphed to Mr. Hayes to appear in this Court in this cause, and consent to the confirmation of the report of commissioners as to line at Keokuk and Hamilton bridge. What did Mr. Hayes do? From his affidavit, one would suppose that the record in this cause would show that he appeared on behalf of the State of Illinois and consented to the confirmation of this report, but he did not do so. On March 30, 1893, the record shows that on motion of Mr. Walter I. Hayes in behalf of counsel, leave is granted to file the report and a motion to confirm was submitted by Mr. Hayes on behalf of counsel. In behalf of what counsel? We should expect the motion to be on behalf of counsel of both states or on behalf of the State of Iowa and consented to by the State of Illinois, but Mr. Hayes was apparently suspicious of this telegram himself.

The motion he did submit was as follows:

"Now comes the said plaintiff, the State of Iowa, and moves the Court for an order confirming the report of the commissioners appointed by this Court to determine and mark the boundary line between said States at the nine bridges across the Mississippi river between said States

so far as it relates to the boundary at the Keokuk and Hamilton bridge, at Keokuk, Iowa, upon which report has been made. Said motion is founded upon said report and the record in this case.

(Signed) J. H. COLE.
WALTER I. HAYES,
Attorneys for Plaintiff.

Cole is not an attorney, but superintendent of the Bridge Company. It is admitted by Mr. Hayes that Cole is not an attorney, but he says that he conceived the idea that Cole was an attorney, although his name does not appear upon any of the briefs or other papers connected with this suit. Yet it is plain from the telegram that Cole himself was in Washington with Hayes, because the telegram is sent to Hayes, care of J. H. Cole. We shall see later on why it was so sent. No explanation however is given by Mr. Hayes why, if he considered this telegram genuine, he did not appear on the record as the attorney for the State of Illinois, and consent on behalf of that State to the confirmation of the report. The record however shows that the motion was made on behalf of the State of Iowa, and that Hayes appeared on that motion as the attorney for that State. Mr. Hayes, suspicious of the telegram, apparently did not care to have it placed of record that he appeared as the attorney for the State of Illinois and consented to the confirmation of the report.

Mr. Hayes may have stated verbally to the Court that the State of Illinois consented. If he did, it explains why this Court entered the order of April 10th without requiring notice to the State of Illinois. If this be the fact, it was an imposition upon this Court, because this alleged telegram was not sent by Attorney General Moloney, nor by his authority, nor did he know anything about it until he saw the copy of the telegram printed among the papers

of the State of Iowa. The matter was at once examined. The result of this examination appears in the affidavit of the Attorney General filed herewith, and a printed copy of which is attached to this brief.

Mr. George Edmonds is attorney for the Keokuk and Hamilton Bridge Company, and has been such attorney since 1871, as he himself states in his own affidavit filed on this motion.

Mr. Moloney became Attorney General of the State of Illinois on January 11, 1893. He appointed as his own assistant Mr. T. J. Scofield. Mr. Scofield is the son-in-law of Mr. George Edmunds. From March 20th to March 27, 1893, inclusive, Mr. Scofield was sick and confined to his home. Mr. Moloney's home was at Ottawa, Illinois. The Supreme Court also meets at Ottawa, Illinois, and it is the duty of Mr. Moloney as Attorney General to attend the Supreme Court when in session, to take care of the cases in which the People of the State of Illinois are interested. He swears that he was in Ottawa from March 20th to March 22d. and that he returned to Springfield on March 22d, left that city on March 24th and returned to Ottawa, where he remained until April 3d, when he again returned to Springfield. The correspondence at the Attorney General's office was large, and needed constant attention. It was necessary for the Attorney General to be in Ottawa. Mr. Scofield was sick, and he suggested that his father-in-law, Mr. George Edmonds, would come to the Attorney General's office and attend to the ordinary correspondence thereof. From March 22d to March 27th Mr. George Edmonds remained in the attorney general's office attending to the correspondence addressed to said office, and his duties were confined thereto. At that time the Attorney General did not

know that Mr. Edmonds was the attorney for the Bridge Company, nor did he learn that fact until after the adjournment of this Court at its last term. Attorney General Moloney swears that he does not know and never did know Walter I. Hayes or John H. Cole; that he never sent the telegram in question and did not know of its existence until he saw what purports to be a copy of it a few days ago among the affidavits filed in this cause on behalf of the State of Iowa; that upon seeing the telegram he made diligent inquiry in regard to it, and ascertained that it was written and sent by George Edmonds, on Sunday, the 26th day of March, 1893; that George Edmonds had no authority, directly or indirectly, to send said telegram, and that had he, Attorney General Moloney, known of it, he would have repudiated it; that he would not agree to appoint anybody to act on behalf of the State of Illinois in this matter without having an opportunity of personally inspecting and examining said report. He further states positively that no notice was ever given to him, nor was he informed by anybody that the commissioners had made their report, or that an application would be made to this Court to confirm any report of said commissioners; nor did he learn until after the final adjournment of this Court at its last term that the report of said commissioners had been confirmed, or that any report had ever been made by said commissioners.

It therefore appears that Mr. George Edmonds, the attorney for the Bridge Company, without any authority from the Attorney-General of the State of Illinois, sent this telegram, signing Attorney General Moloney's name thereto. He knew, of course, that Cole, the superintendent of the Bridge Company, was in Washington.

The Bridge Company stands behind the State of Iowa in this suit. Cole, in his affidavit, states that there has been litigation between this Bridge Company and various municipalities in Illinois over the question of taxation, in a number of which Mr. A. W. Green has appeared as counsel for the City of Hamilton and the Township of Montebello; all of which culminated by agreement between both parties, and at the suggestion of the attorneys of Illinois, in invoking the aid of the States of Iowa and Illinois to determine the question of the boundary line.

This statement is not true, nor is it in accordance with the statement contained in the affidavit of Mr. George Edmonds, the attorney for the Bridge Company. He states that he applied on behalf of the Bridge Company to Attorney General Hunt to bring suit in this Court against the State of Iowa in the name of the State of Illinois, and that Mr. Hunt refused, but said that if the State of Iowa would bring suit he would appear and answer for the State of Illinois, and that thereupon application was made to the Attorney General of Iowa and suit was brought.

It is quite clear that Mr. Edmonds has been the manager of this suit on behalf of the Bridge Company, the State of Iowa being the nominal plaintiff. He procured the signature of the Attorney General of Illinois to the joint request for the appointment of commissioners, not disclosing to the Attorney General that he was the attorney of the Bridge Company, but presumably acting in the public interest or from friendship to the Attorney General who had appointed his son-in-law as his assistant. Mr. Cole, in his affidavit, admits that the expenses of the commissioners were paid by the Bridge Company, the

reason he gives, being that there was no fund available for that purpose in either State, nor would there be until after the meeting of their respective legislatures. As a matter of fact, the legislature of Illinois was then in session. This, however, is not particularly material. It is, however, material that the telegram relied upon in this case was sent by Mr. George Edmonds, the attorney of the Bridge Company; that it was sent without any authority from the Attorney General of Illinois, and without his knowledge. It was a part of the scheme on the part of Cole and Edmonds after this Court had decided the legal question involved in favor of the State of Illinois, by underhanded means, to wrest from the State of Illinois the fruits of that victory.

Counsel in their brief say that it appears by the affidavit of Mr. George Edmonds that he was in Springfield on the 1st. or 3d. of April, 1893, and then indicated to the Attorney General of the State of Illinois the fact that the report had been filed.

Mr. Edmonds' affidavit on this point is to the effect that "on Saturday 1st or Monday 3d of April, 1893, deponent was at the Attorney General's office of Illinois, at Springfield, and there informed either the Attorney General or his assistant that said report had been filed and motion for confirmation made, and as the time to make a new assessment was near at hand, requested that the matter be attended to at once."

Attorney General Moloney swears that he was not in Springfield on the 1st of April, but that he returned there on the 3d of April, and that he did not see Mr. Edmonds on that day. But why was it necessary to inform the Attorney General of Illinois on the 1st. or 3d. of April that the report had been filed, and request him

to attend to it, if, as is claimed, he had sent a telegram on March 26th authorizing Hayes to appear for the State of Illinois, and consent to the confirmation of the report?

Edmunds without authority on March 26th sends this telegram to Hayes, care of Cole, and says that he walked into the Attorney General's office at Springfield on the 1st or 3d of April, and told him that the report had been filed and requested him to attend to the matter. Further comment on these facts would seem to be unnecessary. The State of Illinois never agreed to the confirmation of this report. It never had any notice that the report would be presented for confirmation, and the statements in regard thereto in the petition filed on behalf of the State of Illinois are strictly true.

III.

MERITS OF THE CONTROVERSY.

Counsel for the State of Iowa claim "that the main channel of the Mississippi river at the point where crossed by the Keokuk and Hamilton Bridge is substantially from the west bank of Island No. 4 to the Iowa shore, and was navigable from bank to bank." Even if the river was navigable from bank to bank at this particular point for boats crossing the river, it would not follow that the channel of commerce used by steamboats and other vessels engaged in the carrying trade up and down the river extended from bank to bank. There might be a pathway across the river which ferry and other boats could use; but that has no bearing on the question to be determined in this case. Yet a great part of the affidavits filed on behalf of the State of Iowa are taken up with statements in regard to this cross-channel.

We are to ascertain in this case the main navigable channel usually followed by vessels engaged in the carrying trade, and the middle of that channel is the boundary line. It is not expected that the exact location of this channel shall be fixed upon this motion. The question on this motion is whether the commissioners have correctly fixed the boundary line. If they have not, then the order, so far as it confirms the report of the commissioners, should be set aside. Counsel for the State of Iowa say that the "boundary line was located entirely with reference to the navigability of the stream. The measurement in Illinois was made from 200 to 250 feet west of the shore line, and the measurement from the Iowa shore was made some fifty feet east of the shore line, and these two points west of the shore of Island No. 4 and east of the Iowa shore were located with reference to the navigability of the river at and between said points."

If this be true, then the line was not fixed by the commissioners at the proper point on their own showing, as will appear from an examination of the plat filed by the commissioners with their report. This plat shows that the commissioners fixed the shore lines and established the boundary line exactly midway between these two shore lines, being 1,461.35 feet from the Iowa shore, and 1,461.35 feet from the Illinois shore.

Turning now to the joint affidavit of Carpenter and Meigs, they state that they "took a point 500 feet east of the easterly Illinois abutment of said bridge, said abutment having been constructed about 700 feet into the river west of the original shore to island number 4, and then measured westerly to a point about 200 feet west of the abutment of the Iowa shore, said abut-

ment being about 250 feet east of the Iowa shore." That would make the western boundary of the channel, according to the commissioners, fifty feet east of the Iowa shore, and the middle of the channel would be midway between that point and the Illinois shore. The plat shows that the boundary line is fixed exactly midway between the two shores. Therefore, if the statement in the affidavit is correct, the boundary line is twenty-five feet out of the way. Again, on the plat of the commissioners there is marked the "approximate low water line of "river." It would hardly seem as if the distance between the low water line and the shore line as established by the commissioners could be a part of the main navigable channel of the Mitsissippi river, but according to their affidavit it is included in that channel.

In this joint affidavit it is stated that "within the bed of the main stream there is an artificial channel in the narrower sense lying along the Iowa shore, which is *purely artificial*, and was excavated in the solid rock." It is claimed on behalf of the State of Iowa that in ascertaining the channel it must be ascertained as it was before the bridge was built, and as the channel existed in its natural state, and yet these commissioners include as a part of the channel this purely artificial channel mentioned in the affidavit. This plat filed by the commissioners with their report shows the steamboat channel. The west portion of that steamboat channel, we understand, is the artificial channel spoken of in the affidavits. It is not a part of the navigable channel referred to in the affidavits filed on behalf of the State of Illinois. The eastern portion of the steamboat channel is marked on the plat of the commissioners, being that portion east of the pivot pier, and is a portion of the original main navigable channel.

An examination of this plat filed by the commissioners with their report, we submit, must convince any one that the boundary line was fixed by first establishing the shore lines and then taking a point midway between the two shore lines as the boundary line.

As we have stated, it is claimed on behalf of the State of Iowa, that the boundary line is not to be determined by the condition of the bed of the river at the present time, but that it must be determined by the location of the main navigable channel prior to the construction of the Keokuk and Hamilton Bridge and before any changes were made by artificial means. Let us concede that proposition. Do the affidavits filed on behalf of the State of Iowa sustain the proposition that the boundary line as fixed by the commissioners is the middle of the the main navigable channel determined in this manner? We have already shown that the joint affidavit of the two commissioners proves that even on their own showing the line is not corectly fixed.

Taking the affidavits filed by the State of Iowa as a whole, there is very little said in any of them in regard to the real question in issue here. A great part of them is taken up in attempting to show that there was a passage way for ferry and other boats from the Iowa shore to the shore of Island number four. Even this passage way was at some distance below the bridge. For instance, C. C. Carpenter swears that "lumber that is designed for points in Illinois oppo- "site Keokuk, Iowa, is brought down through the canal "and down through the pivot span of the Keokuk and "Hamilton Bridge to where there is good water and "taken across the river below said bridge and landed on "the Illinois shore." (Complainant's Rec., 40.) Henry

B. Whitney swears that he has crossed and recrossed the river repeatedly at a point about 400 feet east of the Iowa shore, and about 150 yards below the above named bridge. (Complainant's Rec., 38.) There are other affidavits to the same effect. Other portions of the affidavits speak of a certain warehouse on the west shore of Island number 4. Just where this warehouse was located the affidavits leave in doubt. One of the plats shows it at the end of a dyke built out in the river. But all such matters in the affidavit seem to us to be immaterial.

It may be conceded that, at certain seasons of the year, steamboats made landings at certain places on Islands numbers 2 and 4. It may also be conceded that the river near the Illinois shore at Hamilton was as good for navigation as it was near the Iowa shore at Keokuk before the bridge was built. We have never claimed that the main navigable channel extended to the Iowa shore. It might just as well be said that at low water the river is navigable from bank to bank. The difference between high and low water is sometimes, we are informed, as great as twenty-two feet, and in extreme high water Island number 4 itself is navigable. The real question to be decided in this case is,—where is the main navigable channel of the river usually followed by vessels engaged in the carrying trade up and down the river? Upon this question the affidavits filed on behalf of the State of Iowa are strangely silent. Meigs and Carpenter, two of the commissioners, it is true, state that the whole width of the main arm of the Mississippi River between the points specified in their affidavit was the channel of navigation of the Mississippi River, but other portions of their affidavit qualify considerably this statement, and their affidavit also shows, as we have said, that they

have not even, by their own showing, correctly fixed the boundary line on the plat filed with their report. They do not, however, pretend to swear that prior to the construction of the Keokuk and Hamilton Bridge the main navigable channel of the river usually followed by vessels engaged in the carrying trade extended from shore to shore. In fact, they do not show that, of their own knowledge, they were qualified to give any testimony upon that point. They say that they examined authenticated maps and soundings made by the engineering corps of the United States Army during the last fifty years, but it is a significant fact that no copy of any of these maps is filed with these papers.

Among the affidavits filed on behalf of the State of Iowa on this motion is an affidavit by Albert Wempner, the other commissioner, in which he seeks to explain an affidavit made by him in the case of the *Keokuk and Hamilton Bridge Company* v. *Bertschi*, in which the same question was involved as in this case. The affidavit made by Wempner in that case is as follows:

IN THE CIRCUIT COURT OF HANCOCK COUNTY, ILLINOIS.

Keokuk and Hamilton Bridge Company, *Complainants*, vs. John W. Bertschi, County Treasurer and ex-officio Collector of Hancock County, Illinois, and William M. Guthrie, Assessor of the Town of Montebello, *Defendants*.	*Affidavit*.

STATE OF IOWA, } ss.
LEE COUNTY. }

Albert Wempner, being first duly sworn, doth depose and say that he is a resident of Keokuk, Iowa, and has been engaged as master and pilot of steamboats on the

Mississippi River, most of the time since the year 1852; that he is entirely familiar with the Mississippi River at and near the city of Keokuk, Iowa, and was for many years prior to the building of the Keokuk and Hamilton bridge at that point; that before the building of said bridge the only channel in said river at or near the place crossed by said bridge along which vessels in the carrying trade did or could pass, was near the Iowa shore, the west line of said channel being where the pivot pier of said bridge now stands, and the east line of said channel at a point between three hundred and four hundred feet east of where said pier now stands; that the above described channel was the only channel at this point that could be or was used for the purpose of commerce on said river, the water east of said channel being too shallow in an ordinary stage of water to be used by vessels engaged in the carrying trade; that the only change in said channel at said point, since said bridge was built, was made by artificial means, by blasting and removing the rock-bed of the river and extending said channel westward to the west abutment of said bridge.

In witness whereof I have hereunto set my hand this 25th day of April, A. D. 1891.

ALBERT WEMPNER.

Subscribed and sworn to before me this 25th day of April, A. D. 1891.

ALANSON L. PARSONS,

(L. S.) Notary Public in and for Lee County, Iowa

(Deft's. Rec., p. 27.)

In his affidavit, filed upon this motion, he makes the following statement in regard to his former affidavit:

That I have not had submitted to me the original of said affidavit, and as to the correctness of the copy I am unable at this time to state. I state, however, that the said affidavit, said to have been made by me on or about the 25th day of April, 1891, was made, to some extent, upon a misapprehension of the facts; that while acting as pilot upon the Mississippi River, boats engaged in the carrying trade, going north of the city of Keokuk, as a matter of convenience, ordinarily selected a channel running nearer the Iowa shore than to the Illinois shore; that

where my affidavit states "that said boats could not go easterly at a point in the vicinity of the Iowa shore in said channel," I was mistaken, and that portion of the affidavit was not called to my attention at the time of making same, as I have personally known for a great many years that the Mississippi River at a point between Keokuk, Iowa, and Hamilton, Illinois, at the place where the Keokuk and Hamilton bridge is located, was prior to the location of the bridge navigable for steamboats engaged in the commerce of said river. (Compl't's. Rec., p. 18.)

It will be observed that the only statement in his first affidavit in which he claims he was mistaken is, "that "said boats could not go easterly at a point in the vicinity "of the Iowa shore in said channel." We find no such statement in his first affidavit. As a matter of fact, his present affidavit does not contradict his former affidavit as far as it relates to facts within his own knowledge. He does say, of his own knowledge, that the Mississippi River at the place where the Keokuk and Hamilton bridge is located was prior to the location of the bridge navigable for steamboats engaged in the commerce of the river; but he does not state where the navigable channel was located. He also states that after he was appointed commissioner he made careful examinations of the bed of the river, and examined surveys and plats of the same, with a view of ascertaining the middle of the main navigable channel, and became satisfied that the middle of said channel was at the point named in his affidavit, which, by the way, is not the point marked on the plat filed with the commissioners' report.

But it was unnecessary, according to his former affidavit, for him to make any examinations of plats or surveys, because according to that affidavit he had personal knowledge from the year 1852 in regard to the location

of the navigable channel used for the purposes of commerce on the river, and he locates it at the same place as it is located in the affidavits filed on behalf of the State of Illinois on this motion, "the west line of said channel being where the pivot-pier of said bridge now stands, and the east line of said channel at a point between three and four hundred feet east of where said pier now stands." It is also a significant fact that in this former affidavit he calls attention to the change in the channel since the bridge was built, made by blasting and removing the rock-bed of the river and extending the channel westerly to the west abutment of said bridge. These two affidavits of Wempner illustrate quite clearly the difference between the affidavits filed upon this motion by the State of Illinois and the State of Iowa. Wempner's first affidavit is directly to the point in issue. The last affidavit of Wempner entirely evades that point. We may add that Wempner in his last affidavit does not deny the statement in Waggoner's affidavit, that Wempner told him that in fixing the boundary he, Wempner, did not consider that the channel used by boats had anything to do with the matter. (Deft's Rec., page 37.)

George Edmonds also makes an affidavit in regard to the condition of the river, for Mr. Edmonds is not only the attorney of the Bridge Company, but he has been a civil engineer and a stone contractor, and has also occupied other positions as disclosed by this record. He says that in his opinion, before the construction of the dam and dyke referred to in his affidavit any steam or other boat that could pass over the rapids at any stage, high, low, or medium water, could as easily and safely pass over any part of said river between said island and said Iowa shore as it could pass over said rapids. But the ques-

tion here is not what steamboats could do but what they did do. What course did they usually follow in going up and down the river?

Hamilton's affidavit on this point is to the same effect, and merely gives his opinion. Whitney's affidavit refers more particularly to the cross channel in the river. The same may be said of the affidavits of Sample and Conn.

Jones's affidavit proves too much. He says: "I find by careful measurements that at a point 250 feet from the Iowa shore line there is at this date with a stage of 1.4 feet above low water no water at all at that point, and that it would be necessary to go at least fifty feet further to reach the west abutment of said bridge." (Complt's. Rec., 43.) The west abutment of said bridge, therefore, would be 300 feet from the Iowa shore. Fifty feet west of the abutment there is no water, and yet the commissioners in their affidavit say that the westerly line of the navigable channel is 200 feet westerly from the west abutment of said bridge, so that in 150 feet of this channel, which, it is claimed, is the main navigable channel of the Mississippi River used by vessels at all seasons of the year, there is no water at all.

These are samples of the affidavits filed on behalf of the State of Iowa on this motion. In great part they do not touch the issue at all. Where they do touch the issue, they are shown to be incorrect.

The affidavits filed on behalf of the State of Illinois are directly in point and made by persons who had personal knowledge of the location of the navigable channel for many years prior to the building of the bridge. They are to the effect that before the Keokuk and Hamilton bridge was built the navigable channel originally used and along which vessels in the carrying trade passed,

was near the Iowa shore; the west line of said channel was where the pivot pier of said bridge now stands, and the east line at a point not exceeding 400 feet east of where said pivot pier now stands; the above described channel was the only channel in said place where vessels engaged in the carrying trade could pass. (Deft.'s Rec., pp. 34, 35, 36, 29, 33.)

Counsel say that the boundary line of a state could hardly be determined upon the statements contained in these affidavits. That is entirely true. It is not asked or expected that the Court, on this motion, will proceed to fix the boundary line, but these affidavits do show conclusively that the middle of the main navigable channel is not at the point fixed by the commissioners as the state boundary line. We do not expect this Court to fix the line on *ex parte* affidavits on either side, but it is quite clear from all the affidavits that the line was not correctly fixed by the commissioners.

There is another aspect of this case which seems to have escaped the attention of the counsel for the State of Iowa. If their contention on this motion is correct, then this suit is an imposition upon this Court. If the main navigable channel in fact extends from shore to shore, then there was no question of law to be decided between the State of Illinois and the State of Iowa. But such is not the case made by the pleadings. The original bill of the State of Iowa claims that the boundary line is the middle of the Mississippi River; "yet said State of Illinois and its several municipalities bordering on said Mississippi River, claim the right to and do assess and tax as in Illinois, all bridges and other structures in said river from the Illinois shore to the middle of the steamboat channel or channel of said river usually tra-

versed by steam and other crafts in carrying the commerce of said river regardless of whether said channel is east or west of the middle of the main body or arm of said river." The bill also alleges, "That the steamboat channel or channel of the river where boats ordinarily run in carrying the commerce of the river varies from side to side of said river, sometimes next to the Illinois shore and then next to the Iowa shore, and at other times crosswise at most points in said river shifting from place to place as the sands of its bed are changed by the current at every stage or change of water; that at the point of the Keokuk and Hamilton bridge the river bed is rock and not subject to much change; that at that point, were it not for the bridge, the middle of the steamboat channel would be and was before said bridge was erected, fully 300 feet east of the east end of the draw in said bridge, or 880 feet from the Iowa shore of said river, and 2,162 feet from the shore of said river in Illinois on Island No. 4."

In the cross-bill of the State of Illinois it is alleged that the State of Iowa assesses and taxes the bridges to the middle of the main body of said river, while the State of Illinois assesses to the middle of the channel usually traversed by steamboats in navigating said river, and "that the middle of the steamboat channel, or that part of the river usually traversed by steamboat men in navigating said river, is at or near the east end of said draw or pivot span about 380 feet from the west abutment, and 1,812 feet from the east abutment."

The answer of the State of Iowa to this cross-bill admits "that said State of Illinois and its several municipalities bordering on said river, claim the right to tax said bridges from the Illinois shore of said river to the

middle of the channel of commerce, or steamboat channel—that is, the channel usually used by steamboats and other crafts in navigating said river—and that this respondent, the State of Iowa, and its several municipalities bordering on said river, claim the right to, and do tax said several bridges to the middle of the main arm or body of said river, regardless of where the channel of commerce or steamboat channel—that is, that part of said river usually traversed by steam or other vessels carrying the commerce of said river—may be."

It was conceded by these pleadings that the navigable channel usually followed, was near the Iowa shore; they differ as to the exact location of this channel, but they all agree that it is west of the middle of the main body of the river. The contention between the two states, both in this Court and in all prior litigation, was whether the boundary line was the middle of this channel of navigation or the middle line between the two shores. This Court in its opinion thus states the contention:

"The Mississippi River flows between the States of Iowa and Illinois. It is a navigable stream, and constitutes the boundary between the two states; and the controversy between them is as to the position of the line between its banks or shores which separates the jurisdiction of the two states for the purposes of taxation and other purposes of government.

The complainant, the State of Iowa, contends that, for taxation, and for all other purposes, the boundary line is the middle of the main body of the river, taking the middle line between its banks or shores without regard to the 'steamboat channel,' as it is termed, or deepest part of the stream, and that, to determine the banks or shores, the measurements must be taken when the water is in its natural or ordinary stage, neither swollen by floods nor shrunk by droughts.

On the other hand, the defendant, the State of Illinois, claims that, for taxation and all other purposes, its jurisdiction extends to the middle of 'the steamboat channel' of the river, wherever that may be, whether on its east or west bank—the channel upon which commerce on the river by steamboats or other vessels is usually conducted, and which for that reason is sometimes designated as 'the channel of commerce.'"

The State of Iowa cited on behalf of its contention the case of *The Dunlieth and Dubuque Bridge Company* v. *the County of Dubuque*, 55 Iowa, 558, wherein the Supreme court of Iowa decided that the boundary line was the middle of the river measuring from bank to bank. The State of Illinois cited on behalf of its contention the case of *Buttenuth* v. *St. Louis Bridge Company*, 123 Ill., 535, wherein the Supreme court of Illinois decided that the boundary line was the middle of the channel of commerce. This Court, it is conceded, decided in accordance with the contention of the State of Illinois.

Now, the State of Iowa turns round and in face of the contention of itself and its municipalities through all these years attempts to change front and says that the channel of commerce extends from shore to shore. If this were so, then this suit, as we have said, was an imposition upon this court; but it is not so. It is clear from the pleadings in this case, it is clear from the affidavits filed upon this motion that the main navigable channel of the river—the channel of commerce used by vessels engaged in the carrying trade, is not the same as the river from bank to bank; that this channel of commerce is, and was before the bridge was built, near the Iowa shore.

It seems to us equally clear that the commissioners located the boundary line by fixing the shore lines, and

taking a point midway between those two lines, fixed upon that point, because it was midway between the two shores, thus fixing the boundary line at the exact point which the State of Iowa claimed in its pleadings was the boundary line.

We respectfully submit, therefore, that this partial report of the commissioners is erroneous, that the order confirming this report should be set aside, that the report itself should also be set aside and an order entered in accordance with the prayer of the petition of the State of Illinois.

Respectfully submitted.

M. T. Moloney,
Attorney General of the State of Illinois.

A. W. Green,
Henry S. Robbins,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1893.

The State of Iowa
vs.
The State of Illinois. } *Original Suit in Equity.*

STATE OF ILLINOIS,
COUNTY OF COOK. } ss.

Maurice T. Moloney, being duly sworn, doth depose and say as follows:

I am Attorney General of the State of Illinois, and have been such since the eleventh day of January, A. D. 1893. By the law of this State I was entitled to only one assistant when I assumed control of said office, and that condition of affairs continued until the first day of July last past. On assuming control of said office I appointed Mr. T. J. Scofield as my assistant. The said T. J. Scofield is the son-of-law of Mr. George Edmonds, who has made an affidavit in this cause on behalf of the State of Iowa. During the latter part of the month of March and including from the 20th to the 27th of said month my said assistant, Mr. Scofield, was sick and confined to his bed in his home in the city of Springfield. During said time the Supreme Court of the State of Illinois was in session in Ottawa, La Salle County, in said State. The said city of Ottawa is and has been my home since assuming the said office, and I have not yet removed my family from the city of Ottawa to the said city of Springfield, and it is and

has been my custom to return to Ottawa to my family on Saturday of each week.

I further state that it is made by law my duty to attend the Supreme Court of the State of Illinois at each session thereof and write briefs in People's cases on behalf of the People.

I further state that I have made it a rule to keep an exact account of the number of days that I have been absent from the city of Springfield since the 11th day of January last past. On the 20th day of March, at 11:40 A. M., I left the city of Springfield and went to Ottawa, and returned from said last named city on the night of the 22d of March, and remained in the city of Springfield until the night of March 24th, when I again left said city of Springfield and returned to the city of Ottawa, where I remained until the 3d day of April following, when I returned to the city of Springfield on said last named date. From the 24th to the 3d day of April aforesaid I was in attendance on the Supreme Court of the State of Illinois, then in session in Ottawa, and during said time was engaged in comparing abstracts and records, and writing briefs on behalf of the People in People's causes then pending at the March term of said court.

I further state that the legislature of the State of Illinois was, during the month of March, in session in Springfield, and numerous questions from that source were being propounded to me which required immediate answers. The volume of business coming to said office was quite large, and, in my opinion, required immediate attention. Inasmuch, therefore, as my assistant was confined to his home by sickness, and as I was compelled to be in Ottawa attending the Supreme Court, my said assistant, Mr. Scofield, suggested that his father-in-law,

Mr. George Edmonds, would come to my office and attend to the ordinary correspondence thereof during my absence therefrom. From the 22d of March until the 27th of said month, inclusive, the said George Edmonds remained in my office, attending to the correspondence addressed to said office, and his duties were confined thereto. The first knowledge that I had of said cause was when Mr. George Edmonds requested me to sign the joint request to appoint commissioners. I did not know at that time that Mr. Edmonds was attorney for the Keokuk and Hamilton Bridge Company, and did not learn such fact until after the adjournment of this court at its last term.

It is stated in the affidavits in this cause on this motion filed on behalf of the State of Iowa that I sent a telegram on the 26th day of March to one Walter I. Hayes, which said telegram is as follows, to wit:

To Walter I. Hays, Cr. J. H. Cole, Washn.

You are authorized to appear in Sup. Court of U S. in case of *Iowa* v. *Illinois*, and consent to the confirmation of the report of Commissioner as to line at Keokuk and Hamilton Bridge.

M. T. MALONEY.

I do not know, and never did know, the said Walter I. Hays, or the Mr. Cole in whose care said telegram purports to have been sent. I am now informed that the said Mr. Cole is the superintendent of the Keokuk and Hamilton Bridge Company referred to in the brief filed herein on behalf of the State of Illinois. I never sent said telegram, and did not know of its existence until I saw what purports to be a copy of it a few days ago among the affidavits filed in this cause on behalf of the State of Iowa. Upon seeing said telegram so printed as aforesaid, I made diligent inquiry in relation to the same,

and ascertained that it was written and sent by the said George Edmonds on Sunday, the 26th day of March, 1893, to the said Walter I. Hays, in care of said Mr. Cole. The said George Edmonds had no authority directly or indirectly from me to send said telegram, and had I known of it I would have repudiated the same. I would not agree to appoint anybody to act for or on behalf of the State of Illinois in this matter without first having an opportunity of personally inspecting and examining said report. Said telegram was sent as aforesaid without my authority or knowledge, and I only learned of it as hereinbefore stated. I did not see Mr. Edmonds in my office on the third day of April, 1893, nor at any other place on that day.

I further state positively that no notice was ever given to me nor was I informed by anybody that the said commissioners had made their report or that an application would be made to this court to confirm any report of said commissioners, nor did I learn until after the final adjournment of this court at its last term that the report of said commissioners had been confirmed or that any report had ever been made by said commissioners.

Subscribed and sworn to
before me, this 14th day of
November, A. D. 1893.

MAURICE T. MOLONEY.

FRANK M. PETERS,
Notary Public.
[NOTARIAL SEAL.]

Supreme Court of the United States.

No. 2, Original.—October Term, 1905.

The State of Iowa, Complainant,
vs.
The State of Illinois. } In Equity.

[April 23, 1906.]

This cause came on for final decree and was submitted on the following stipulation:

"And now comes the State of Iowa, complainant in this cause, and also comes the State of Illinois, defendant in this cause, and severally and jointly move the court to vacate and set aside so much of the interlocutory order entered in this cause on the third day of January, A. D. 1893, as orders 'that a commission be appointed to ascertain and designate at said places the boundary line between the two States, said commission consisting of three competent persons to be named by the court, upon suggestion of counsel, and be required to make a proper examination and to delineate on maps prepared for that purpose the true line as determined by this court and report the same to the court for its further action;' and also the interlocutory order entered in this cause on the seventh day of March, A. D. 1893; and also that part of the interlocutory order entered in this cause on the tenth day of April, A. D. 1893, which was not set aside and vacated by the interlocutory order entered in this cause on the fifteenth day of January, A. D. 1894; and that that part of the interlocutory order entered in this cause on the third day of January, A. D. 1893, whereby it was 'ordered, adjudged, and decreed by this court that the boundary line between the State of Iowa and the State of Illinois is the middle of the main navigable channel of the Mississippi River at the places where the nine bridges mentioned in the pleadings cross said river,' be declared the final order, judgment, and decree of this court in this cause.

Chas. W. Mullan,
Attorney General of Iowa.
W. H. Stead,
Attorney General of Illinois."

In consideration whereof and of the decision of this court reported 147 U. S. 1, it is ordered, adjudged and decreed that the boundary line between the State of Iowa and the State of Illinois is the middle of the main navigable channel of the Mississippi River at the places where the nine bridges mentioned in the pleadings cross said river.